UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case Nos. 08-13555 (JMP)

08-01420 (JMP)(SIPA)

- -x

In the Matter of:

LEHMAN BROTHERS HOLDINGS, INC., et al.

Debtors.

- -x

In the Matter of:

LEHMAN BROTHERS INC.,

Debtor.

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

January 14, 2009

2:32 PM

B E F O R E:

HON. JAMES M. PECK

U.S. BANKRUPTCY JUDGE

I. UNCONTESTED MATTERS:

HEARING re Case Conference

HEARING re Debtors Application Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code for an Order Authorizing the Retention and Employment of Ernst & Young LLP as Auditors and Tax Services Provider Nunc Pro Tunc to the Commencement Date

HEARING re Debtors Motion Pursuant to Section 365(d)(4) of the Bankruptcy Code for an Extension of the Time to Assume or Reject Unexpired Leases of Nonresidential Real Property

HEARING re Debtors Motion Pursuant to Section 1121(d) of the Bankruptcy Code Requesting Extension of Exclusive Periods for the Filing of a Chapter 11 Plan and Solicitation of Acceptances Thereof

HEARING re Debtors Motion, Pursuant to Sections 105(a), 363, and 365 of the Bankruptcy Code, for Authorization to (i) Assume a Subscription Agreement and Certain Other Agreements with Wilton Re Holdings Limited, (ii) Amend Said Subscription Agreement, and (iii) Fund the Capital Commitment Pursuant to Said Subscription Agreement

HEARING re Motion for Relief from Stay to Prosecute Adversary Proceeding Against Lehman Commercial Paper, Inc., Pending in the Bankruptcy Court for the Eastern District of California and for Other Appropriate Relief and supporting Declaration of Walter E. Alexander and supporting Declaration of T. Scott Belden

HEARING re Motion for Relief from Stay NOTICE OF MOTION OF CORUS BANK, N.A. FOR (I) A DETERMINATION THAT THE AUTOMATIC STAY DOES NOT APPLY, OR ALTERNATIVELY (II) RELIEF FROM THE AUTOMATIC STAY

HEARING re Debtors' Motion Requesting Joint Administration of Chapter 11 Cases (Luxembourg Residencial Properties Loan Finance S.a.r.l.)

HEARING re Debtors' Motion Requesting Joint Administration of Chapter 11 Cases (BNC Mortgage LLC)

HEARING re Debtors' Motion Directing that Certain Orders and Other Pleadings Entered or Filed in the Chapter 11 Cases of Affiliated Debtors be Made Applicable to Luxembourg Residential Properties Loan Finance S.a.r.l. and BNC Mortgage LLC (Luxembourg Residencial Properties Loan Finance S.a.r.l.)

HEARING re Debtors' Motion Directing that Certain Orders and Other Pleadings Entered or Filed in the Chapter 11 Cases of Affiliated Debtors be Made Applicable to Luxembourg Residential Properties Loan Finance S.a.r.l. and BNC Mortgage LLC (BNC Mortgage LLC)

II. CONTESTED MATTERS:

HEARING re Motion of The Walt Disney Company for Appointment of Examiner Pursuant to Section 1104(c)(2) of the Bankruptcy Code

HEARING re New York State Comptroller's Motion To Appoint A Trustee

HEARING re Motion of The Bank Of New York Mellon Trust Company, N.A. as Indenture Trustee, for Order Pursuant to Bankruptcy Rule 2004 Directing Examination of, and Production of, Documents by Lehman Brothers Holdings, Inc., Lehman Brothers, Inc., Lehman Brothers Commodity Services Inc. and Barclays Capital Inc.

HEARING re Debtors' Amended Motion Pursuant to Bankruptcy Rule 1007(c) to Further Extend the Time to File the Debtors Schedules, Statements of Financial Affairs, and Related Documents

HEARING re Notice of Presentment of Stipulation and Agreed Order Providing for Lehman Brothers Inc.'s Assumption and Assignment of Administrative Agency Agreements to Lehman Commercial Paper Inc.

HEARING re Debtors' Second Motion for an Order Pursuant to Section 365 of the Bankruptcy Code Approving the Assumption of Open Trade Confirmations

HEARING re Debtors' Motion for an Order Pursuant to Section 365 of the Bankruptcy Code Approving the Assumption or Rejection of Open Trade Confirmations

HEARING re Debtors' Motion for an Order Pursuant to Sections 105 and 365 of the Bankruptcy Code to Establish Procedures for the Settlement or Assumption and Assignment of Pre-Petition Derivative Contracts

A. ADVERSARY PROCEEDINGS:

Federal Home Loan Bank of Pittsburgh v. Lehman Brothers Special Financing Inc., et al.

Pre-Trial Conference

Sola Ltd. v. Lehman Brothers Special Financing Inc.

Pre-Trial Conference

SECURITIES INVESTOR PROTECTION CORPORATION PROCEEDINGS:
III. UNCONTESTED MATTERS:
HEARING re Trustee's Motion for an Order Pursuant to 365(d)(4) of the Bankruptcy Code Extending Time to Assume or Reject Unexpired Leases of Nonresidential Real Property

IV. CONTESTED MATTERS:
HEARING re Trustee's Motion for an Order Granting Authority to Issue Subpoenas for the Production of Documents and the Examination of the Debtors' Current and Former Officers, Directors and Employees and Other Persons

HEARING re Notice of Presentment of Stipulation and Agreed Order Providing for Lehman Brothers Inc.'s Assumption and Assignment of Administrative Agency Agreements to Lehman Commercial Paper Inc.

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(Recess from 1:15 p.m. until 2:32 p.m.)

THE COURT: Be seated, please.

MR. DUNNE: Good afternoon, Your Honor. At the outset, I'd like to thank you for the accommodation. I think we've used the hour to reflect on the comments, particularly --

THE COURT: We were going to take a lunch break anyway.

MR. DUNNE: Right. Thank you, Your Honor. The --

THE COURT: Trust me on that.

MR. DUNNE: So I think we've narrowed the issues or at least what I'm going to address in my remarks. At the outset, I want to just touch on the statements you made several hours ago now on points that you were considering. We obviously think that a meet and confer makes sense. We're fine with the parties you identified in terms of participation. Obviously, the work plan, we're also in support of that, was in our pleadings with the goal that that work plan is supposed to accommodate what will, in any event, be a broad scope for the examiner but with a recognition of what other parties are doing in the case from the SIPC trustee to the creditors' committee and the debtors.

With respect to the financial advisor issue, I think that's precisely what we were trying to get to which was an assessment that the FA would come in but not replicate what A&M was already doing. But understanding that, at the end of the

day, the examiner needs somebody for interpretive guidance with respect to that raw data and the reports coming out of A&M. So we're fine with that suggestion as well.

With that, let me just briefly go through what our proposal was and why we suggested drawing the line on scope where we did. And, again, to come back to something Your Honor said, what we were trying to accommodate was to come up with a principal basis for the exercise of discretion recognizing, at the end of the day, it's simply a recommendation to you and you will exercise that discretion as you see fit. And we were also trying to balance the goal that it would be nice to get it right today to get a scope that we don't have to keep coming back to today that's broad enough to allow the examiner some discretion himself to pursue different avenues and paths. But then not also, on the other hand, defaulting to just including everybody's recommendation and then ending up with a very broad and in some cases, and this is going to be a touchstone of my comments, a parochial set of tasks for the examiner.

With respect to the large core of consensus, I think it comes down to this. I think everybody agrees that the examiner should write a narrative on how, when, why Lehman collapsed. And that the public, the parties in interest, can all benefit from that. Mr. Miller, in his opening remarks, had mentioned that there was a fair amount of media, hype and hyperbole. We agree with that. We think that the examiner's

report can shed some light on that and perhaps calm some of that noise down.

Within that kind of broad headline, we think we cover a lot of ground. We think that that covers all the pre-petition transfer of assets, the pledging of collateral, the dealing -- the numerous dealings among financial institutions such as JPM, Barclays, etcetera. But through the work plan, we'll manage that so as not to duplicate the efforts of the committee with respect to some of those investigations. It also deals with the movement of cash. We heard about the LBIE from the beginning of the case, the transfer of funds in the days before the filing. That's also under that rubric. The transfer of the stock of the LBI subsidiaries to LBIE prior to the prior to the commencement of the SIPC proceeding also falls under that category. The role of the Treasury Department and various federal agencies falls under that rubric. And lastly, this is a point that I'm not sure the Disney companies fully understand, that from LBCC's perspective, their filing date was October 3rd. The scope of the pre-petition acts and occurrences for that debtor would include the Barclays sale because the Barclays sale predated their filing. And to the extent that Mr. Bienenstock is seeking to see whether there were nondebtor assets involved with respect to that transfer, that would fall under our rubric. We didn't think it was appropriate to go beyond that and I'll touch on that briefly.

The areas of disagreement really go to how specific to we need to be in connection with the initial examiner's report. Mr. Miller also stated at the outset that I think he viewed the original scope as a bit parochial. And that is, in essence, our issue. Meaning, the examiner will decide within that broad rubric where to spend his or her time. And if he follows a path that he thinks is particularly productive, he's going to do that. We struggled with why you singled out LBCC and not LCPI, not LBSF. I'm sure creditors who have had pending Rule 2004 motions could come up with a laundry list of things that they would like the examiner to investigate. So that's where we thought there was a principal basis to draw the line and give the examiner broad charge, not give the specificity. And sometimes, Your Honor's order carries with it a little weight that we believe for reasons that these things should be looked into. I've certainly been involved in other cases where that has, in fact, been the case, that we want the examiner drilled down in a specific potential cause of action that we think may exist. And we focused the examiner on that. We did not think that those rose to this level. The examiner can decide for him or herself.

Similarly, with respect to pre-imposed petition occurrences. We think the respective debtors' filing dates deal with eighty, ninety percent of what was suggested anyway. With respect to the Barclays sale per -- call a Barclays sale,

we didn't think that, and couldn't find a precedent for, an examiner kind of seeing whether the sale order was proper, whether objections should have been sustained or not. That doesn't seem -- I mean, it's a final res judicata order. The committee is investigating whether the assets actually transferred foots with the order that Your Honor entered. And there could be issues with respect to that. We hope to resolve issues consensually.

Similarly on the TSA, there have been discussions with the debtors and the committee and Barclays on that but not sure that that's an appropriate scope for the examiner to weigh in on. And again, it's in large part because the examiner -- they can do a report which other parties are already doing but they don't have prosecutorial power. They don't have the ability to pursue these causes of action. And while they're doing this report, in the background, the debtors and the committee and Barclays are working to try to resolve any of those issues consensually.

I think Your Honor dealt with this a little bit in the work plan because I think that's precisely where you were -- at least how I heard those comments -- trying to reconcile those things so that we come up with a work plan if everybody puts their heads together and try to avoid those types of issues to the best that we can.

The other issue, Your Honor, is whether or not the

examiner is kind of limited, at least at the outset, to a factual report. We know that in other cases, clearly, there have been analyses of causes of action. And we don't mean that that should be off limits forever. It's just that starting from what we view as the appropriate scope is what happened when and why pre-petition. That's enough for the initial report. If we thought that other parties couldn't take it from there for some reason then maybe we would need an analysis of certain causes of action. But in some respects, you can argue that having a factual report allows it to be a touchstone for all the parties in the case regardless of the positions that they would take. Once it's colored with a position on the merits of the law, parties either agree or disagree and you find that the parties that agree love the examiner's report; the parties that disagree never cite it. And it can be a benefit to avoid that, because they can't bring the claims anyway, and just lay out what happened to whom, how, in the report.

THE COURT: I have something of a cognitive problem with what you're proposing and I want to just explore it with you a little bit. It seems to me that there's almost no such thing as pristine and pure fact finding. I think that investigations are conducted with a frame of reference and a point of view. And we've used the terms just before lunch several times, agnostic. There is no such thing as a totally

agnostic analysis, at least in my experience because depending upon the perspective point of view and mandate associated with the investigation, certain things are within the zone and certain things are not. Because this is a bankruptcy case and because sophisticated practitioners are aware that bankruptcy cases occasionally involve causes of action for the recovery of assets or to pursue estate claims, and we all know what kinds of claims those are, how is it possible for an examiner to conduct an examination that will be useful ultimately unless there's some connection between the investigation and the possible use of the fruits of that investigation.

MR. DUNNE: I understand that, Your Honor. And it is difficult. And let me start -- I want to respond on the other side of the spectrum and just give an example of what I found particularly difficult in another case. Which is, the examiner in another case we were involved with went into defenses to the causes of action. And the report was published right as we were talking about settling some of these claims and, actually, became somewhat counterproductive in the ability for the fiduciaries to maximize the values of those claims. And so, that is why I'm starting to kind of narrow it -- I would like to see it narrowed in some degree to avoid that. Now, I recognize, on the other side, is precisely where Your Honor's question comes from which is if you're building up a factual record, that factual record's either going to lead you down a

path where you think there might be claims and causes of action or not. And that you're going to be reviewing those facts against the backdrop of some legal landscape. And I recognize that. And it may be an impossible task. I have two proposals. One is that we try to work something out in the work plan phase of this and the meet and confer phase to see if we could somehow limit that. Or maybe we deal with the defensive. But if this examiner perceives potential causes of action, they identify them and they leave it at that and they don't necessarily weigh in on whether the potential targets of those causes of action or claims have what, in the examiner's view, would be meritorious defenses because the examiner doesn't bring those claims. And we may have a different view, we may agree, but I'm not sure that's part necessary. So that would be my suggestion as to how to potentially deal with -- I hear Your Honor's concern about this and I understand it. And I do want the examiner to shed as much light on these things. And, in fact, there's a benefit to kind of pointing in the direction that he or she may think is fruitful. But I'm trying to avoid what I perceive as the negative on the other side of the spectrum.

With that, Your Honor, that's basically where we are in terms of scope limitations and other limitations. I do need to address some of counsel for the Walt Disney Company's comments with respect to the committee. I debated whether to

do this because -- while, some of the what I view is kind of baseless or needless disparity rankled, I do think that I should correct the record on the committee's role to date who we've been representing and the constitution of the committee. Some of this falls within the category, Your Honor, of no good deed goes unpunished. Mr. Bienenstock focused on the indenture trustee's -- and I think made such a broad statement that he calls into question the propriety of the constitution of virtually every official committee when there are multiple debtors and indenture trustee serving on the official committee.

THE COURT: Well, I think the question he was raising -- and I don't know if we actually need to get into this at this point because I'm perfectly prepared to let you continue if you feel it's appropriate. But I thought the point he was making was that the committee as constituted may not be ultimately capable in light of some of the findings and conclusions in the Adelphia case of pursuing claims as to which it may itself be conflicted. I think that's what I was hearing.

MR. DUNNE: I thought -- I heard slightly more than that which was that he was positing a world that we're basically imputing the ability of the creditors' committee's members to discharge their duties at certain subsidiary levels given their holdings.

THE COURT: I think you were hearing maybe more than I was hearing and maybe it's because you're appropriately defensive of your client and the constituency within the committee.

I heard -- and, Mr. Bienenstock, I'm not inviting to come back to the podium to clarify this.

MR. DUNNE: Nor am I, Your Honor.

THE COURT: I think he's had -- he's had his chance. But for purposes -- the record speaks for itself but we're now just talking about the residue of that record which is what we remember and take away from what was said. And I believe that he was suggesting that the examiner should be liberated from the restrictions that the committee would seek to impose on the examiner with respect, in particular, to the identification of causes of action because the distinction made in your objection between an examiner that has no ability, as a matter of law, to pursue claims and a committee that's engaged in an investigation but has that ability is actually a false distinction because, he would argue, the committee you're represent -- may actually not be in a position as an estate fiduciary to pursue those claims once they're identified if some of the same issues that Judge Gerber found in Adelphia apply here.

MR. DUNNE: Well, yes.

THE COURT: That's what I think I was hearing.

MR. DUNNE: Okay. I like what you heard, Your Honor, and I'll just say then that sounds like an issue for another day. Right? That sounds --

THE COURT: Exactly.

MR. DUNNE: That sounds like an issue for another day. Let me just say, the committee members have been working hard on this case. A lot of what they've been doing, for instance, are at the subsidiary levels. You've seen the fruits of it in terms of the open trades and the derivatives which are at LCPI and LBSF. And they take their fiduciary duties very seriously. And I'll leave it at that for now, Your Honor.

THE COURT: I'm confident that they do and everything that I've seen so far in the case indicates that they're doing just that.

MR. DUNNE: And unless Your Honor has any further questions, that concludes my remarks.

THE COURT: Let me just ask this one question. Based upon the remarks that you've just expressed, I gather there is presently no consensus as between the parties as to the precise form of order because there are still some open issues.

MR. DUNNE: That's correct, Your Honor.

THE COURT: Okay.

MR. MILLER: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. MILLER: Harvey Miller again, Your Honor. Your

Honor, I would make a suggestion that may, I hope, resolve this afternoon. The suggestions which the debtors have made that have been referred to throughout the hearing and contained in paragraphs 31 and 32 of the response to the New York State comptroller's motion, I think everybody agrees they're pretty broad in perspective. I would suggest, Your Honor, that that form the basis of an order and we tweak it just a little bit to put in the thirty-day provision as to the filing dates and we add a provision at the end that would state that as part of the trustee's -- I mean, I'm sorry, the examiner's investigation that he determine whether there are any facts -- ascertained whether any facts pertaining to fraud, dishonest, incompetence, misconduct, mismanagement or irregularity in the management of the affairs of the debtor or to a cause of action available to the estate. Taking that out of Section 1106(a)(4). And also add a provision, a decretal provision, directing the parties -- or directing the examiner when appointed to meet and confer with the debtors, the creditors' committee, the SIPA trustee, the Walt Disney Company -- the representatives of these people, the New York State comptroller, Harbinger, Bank of America, everybody who put pleadings in, Your Honor, to meet as to the development of a work plan and a plan of coordination and other matters pertinent to the examiner's investigation and to submit an appropriate order in connection therewith to the Court as soon as possible. Words to that effect, Your Honor. And then

I think we have a starting point and we can go forward and the U.S. trustee can nominate the person and submit an order to Your Honor for the approval of that person. And we have the process started.

THE COURT: I think that's a perfectly fine suggestion and I'm prepared to adopt it. However, as to the form of the order to be entered to start the process, because there have been so many nuanced expressions of support that actually are expressions of disagreement, I think it would be useful to have a form of order that is submitted after it has been --

MR. MILLER: Circulated.

THE COURT: -- at least vetted within that universe --

MR. MILLER: Yes, sir.

THE COURT: -- of objectors and those who have intervened. And that I'm going to so order today's record with the understanding that a form of order acceptable to the parties I've just identified, or you've adverted to in your comments, will have a chance to review the order and it's going to be submitted to me as an order that I can then enter with everybody's consent as to form. If it turns out that there are areas of fundamental disagreement which emerge concerning the language of the order, I will be available for consultation concerning breaking the tie --

MR. MILLER: Yes, sir.

THE COURT: -- because it ultimately will be my order and my discretion as to what will go into it. But I would hope that that could all be accomplished within perhaps the next forty-eight hours or so.

MR. MILLER: We will circulate a proposed order tomorrow morning, Your Honor.

THE COURT: Fine.

MR. MILLER: Thank you, Your Honor.

THE COURT: So an examiner is being appointed.

MR. MILLER: Yes, sir. You don't want to tell us who? No.

THE COURT: And the U.S. trus -- Mr. Bienenstock?

MR. BIENENSTOCK: Your Honor, we have incorporated the debtors' scope in our proposed order and our reply. We incorporated the U.S. attorney's language. I think with the additions that Mr. Miller just recited earlier that that order should do it.

MR. MILLER: That's the order we will circulate.

THE COURT: Well, that, in fact, may do it. However, I know that there were some comments made by Mr. Sabin on behalf of Harbinger concerning some adjustments that he would like to see. I'm not saying that those are all adjustments that anybody should accept. It's just something that I recall hearing this morning. I know that the creditors' committee has

some stated reservations with respect to the articulation of claims and defenses. I'm not particularly receptive to that point of view but it's nonetheless a point of view that they have outstanding. And I think that they should have an opportunity to give up after they've seen the language.

MR. MILLER: Yes, sir. We don't want to prejudge it, Your Honor, but -- okay, Your Honor. I think that would end this items 12 and 13, I think, on the agenda for today.

THE COURT: I think with a great sigh of relief we can move on.

MR. MILLER: The question now, Your Honor, is should we go back to the uncontested matters since there are a lot of people, I think, who came to the court today on the basis that the matters were uncontested and they would be out very quickly.

THE COURT: This is the old bait and switch.

MR. MILLER: Sometimes you have to do that, Your Honor.

THE COURT: Okay. So let's go to the uncontested so that we can allow people to go back and do their work at their offices.

MR. BIENENSTOCK: Your Honor, with your permission, since we're not parties, we're going to --

THE COURT: You're excused. In fact, if there's anybody who wishes to just get up and leave now, that's fine.

I won't be offended. I even got a little wave.

(Pause)

THE COURT: Okay. Let's proceed.

MR. MILLER: Yes, Your Honor. The first uncontested matter, Your Honor, is the debtors' application to employ Ernst & Young LLP. The debtors seek authority to employ Ernst & Young in connection with auditing and tax services. There is no opposition to that, Your Honor.

THE COURT: The motion's granted.

MR. MILLER: Number 2, Your Honor, is the debtors' motion for an extension of time to assume or reject unexpired leases of nonresidential real property. No opposition, Your Honor.

THE COURT: Motion granted.

MR. MILLER: Item 3, Your Honor, is the debtors' motion requesting an extension of the exclusive periods for the filing of the Chapter 11 plan and solicitation of acceptances. There is no objection to that motion either, Your Honor.

THE COURT: That is granted as well.

MR. MILLER: Thank you, Your Honor. Number 4 is the debtors' motion to extend the time within which the debtors must comply with Section 345(b) of the Bankruptcy Code. Again, Your Honor, there is no objection to that and we have been in close coordination with the Office of the United States Trustee.

THE COURT: I'm prepared to grant that but I would simply like confirmation on the record that this is a matter that the U.S. trustee's office has reviewed and is comfortable with.

MR. VELEZ-RIVERA: Your Honor, we've initiated a series of weekly meetings with both some of the attorneys from Weil Gotshal as well as with Alvarez & Marsal. And on the basis of the debtors' progress with respect to a series of cash management issues, we have no objection.

THE COURT: Right. And I've paid some attention to this motion and see that there are a variety of practical issues involving rights of offset in connection with depositary accounts. And it makes good sense that you have more time to work things out with those lenders that are within the zone of acceptable utility to the --

MR. MILLER: Yes, sir.

THE COURT: -- debtor and acceptable to the U.S. trustee's guidelines.

MR. MILLER: Item number 5, Your Honor, is the debtors' motion to assume a subscription agreement and certain other agreements with Wilton Re Holdings Limited. There are no objections to this one, either, Your Honor.

THE COURT: That motion's granted.

MR. MILLER: Thank you, Your Honor. Number 6 is a motion by Superior Pipeline for relief from the automatic stay

to prosecute an adversary proceeding against Lehman Commercial Paper Inc. There is a stipulation, Your Honor, which has been entered into. Do we have the stipulation, John?

MR. LUCAS: We have a stipulation, Your Honor, but we need to add an extra attachment to the proposed stipulation so that includes the complaint and all exhibits which we just received and we'll e-mail with the Court's permission.

THE COURT: So you have the stipulation but it's not yet ready to offer up?

MR. MILLER: That's correct, Your Honor.

THE COURT: Okay.

MR. MILLER: And all the stipulation provides, Your Honor, is to modify the stay so that Superior may prosecute its claim that it holds a mechanic's lien. No other relief other than that at this point, Your Honor.

THE COURT: That's fine. I understand that this relates to --

MR. MILLER: SunCal.

THE COURT: -- a project in California --

MR. MILLER: Yeah. SunCal, Your Honor.

THE COURT: -- that's related to SunCal. And I looked at the papers and this appears to be routine. And so, I'm prepared to approve the stipulation even without seeing it --

MR. MILLER: Thank you, Your Honor.

THE COURT: -- based on the representations.

MR. MILLER: Number 7, Your Honor, is another motion for relief from the automatic stay by Corus Bank, N.A. Again, Your Honor, we have a stipulation. You have it? Okay. The stipulation -- LBHI, Your Honor, is a mezzanine financier in connection with this transaction. And, basically, the modification of the stay is to allow the creditor to give notice to LBHI and give LBHI the opportunity to determine whether or not it wants to take any action.

THE COURT: Is Corus Bank represented in court today?

MR. FRIEDMAN: Your Honor, I am. Jeff Friedman, Katten Muchin Rosenman for Corus Bank.

THE COURT: Maybe you even want to come forward. It's your motion. Is there a stipulation? And I guess my only question is this. As I remember this motion, it was quite in the alternative, that either the stay didn't apply or if it did apply, relief should be granted.

MR. FRIEDMAN: That's correct, Your Honor. The --

THE COURT: What does the stipulation provide? Does it provide --

MR. FRIEDMAN: The stipulation provides that the stay is granted without necessarily either side admitting that it applied in the first place or it didn't apply in the first place.

THE COURT: Sounds like a lawyer-like response.

Okay.

MR. FRIEDMAN: And the stipulation gives the debtor two weeks before we send the notice that Mr. Miller just referred to for Lehman to consider a proposal that they had requested we make about a possible extension of time. We don't think they're going to opt for that but they have two weeks to make a decision under the stipulation.

THE COURT: Okay. Is that stipulation in form to submit?

MR. MILLER: I believe it is, Your Honor.

MR. FRIEDMAN: Yes, it is, Your Honor.

THE COURT: Okay. Fine. I'll approve it.

MR. FRIEDMAN: Thank you, Your Honor.

MR. MILLER: Thank you, Your Honor. In connection with the two most recent filings, Your Honor, items 8, 9 and 10 and 11, Your Honor, the motions that we have made in the past as there have been sequential filings incorporating prior orders of the Court. So I would ask Your Honor if you would grant the motions in respect of 8, 9, 10 and 11.

THE COURT: They're all granted.

MR. MILLER: Thank you, Your Honor. Your Honor, there's one other thing that's not on the calendar. It relates to TPG Austin. There was an agreement, I think, at the prior omnibus hearing that we would have until January 15 to make a decision in connection with a motion or otherwise it would go

over to the January 28th date for possible litigation. The parties have agreed, Your Honor, and they're in the process of reaching a consensual resolution. So the January 15th day has faded away. And it's expected by January 28th that we will have a consensual resolution of this matter. But TPG Austin just wanted to have that on the record for today. So nothing's going to happen tomorrow, Your Honor.

THE COURT: Fine.

MR. MILLER: Okay, Your Honor. Now going back to the contested matters, Your Honor, item 13 -- I'm sorry. Item 14, Your Honor, which is the motion of the Bank of New York Mellon. This is in connection with all of the discussion about examiners, Your Honor. This brings to the forefront the issue of coordination.

THE COURT: Correct.

MR. MILLER: It is the motion of the bank and I'll let the bank present it.

MR. HOROWITZ: Good afternoon, Your Honor. Gregory Horowitz from Kramer Levin on behalf of the Bank of New York Mellon as the indenture trustee for I refer to as the Main Street bondholders sometimes. The Main Street bondholders hold over 700 million dollars worth of claims against LBCS and they also have guaranty claims against LBHI.

Your Honor, LBCS is Lehman Brothers Commodity Services. And the indenture trustee seeks 2004 discovery based

on what appeared to be the following facts. Prior to the bankruptcy, Your Honor, the only Lehman Brothers entity that was ever publicly represented to engage in commodities business at all was LBCS, Lehman Brothers Commodities Trading. If you looked in the company's, LBHI's, SEC filings, their 10Q, for example, states that the company conducts its commodities business through LBCS. If you looked at LBI, Lehman Brothers Inc.'s website and you clicked on commodities, what you were directed was a description of LBCS. There was never any suggestion that there was commodities business conducted through any other Lehman Brothers entity. And indeed, the offering materials for the bonds at issue similarly described LBCS' repository for Lehman Brothers commodities business.

At the time of the Barclays transaction, Your Honor, LBCS was a nondebtor. And at least one or two LBCS creditors, not, by the way, Your Honor, including the indenture trustee, objected to the inclusion of LBCS in the sale and presumably also the inclusion of the free and clear aspects of the sale order. The debtor resolved those objections by agreeing to exclude LBCS from the sale. And at the hearing on the sale order, debtors' counsel expressly represented to the Court that not only was LBCS being excluded from the sale but nothing about the sale would affect LBCS' ability to operate as an ongoing entity.

So we were surprised, Your Honor, when slightly more

than two weeks later, Barclays issued a press release announcing that it had "fully integrated Lehman Brothers commodities business under the Barclays Capital name. On the basis of that, Your Honor, the indenture trustee and the Main Street bondholders have ample reason to believe that the creditors and LBCS may have one or more viable causes of action. And without meaning to give an exhaustive list, the potential causes of action that might arise depending on what the true facts turn to be could include claims by the bondholders against Barclays for successorship liability notwithstanding, I understand, and I've heard Barclays' counsel on the notion that there was a free and clear aspect to the sale order. As I say, LBCS was not part of that and LBCS was a nondebtor and we don't believe that the Court could approve a transfer of LBCS' assets free and clear when it was not a debtor. Could also include, to the extent that the facts suggest that Barclays acquired assets of LBCS, business of LBCS that it did not pay for, could involve claims against Barclays for compensation for that unpaid for value. To the extent that it turns out that Barclays did pay for the commodities business and there was some perhaps last minute reach agreeing LBCS to resolve objections but that it was part of the consideration, then the claims that could arise could be claims by LBCS for its share of the corpus of the sales proceeds.

We don't know, Your Honor, and we don't have to know

for purposes of 2004. Rule 2004 is expressly -- exists to allow creditors to investigate potential claims. It expressly exists, so you do not have to shoot first and ask questions later. You can ask questions and find out whether there's a basis for shooting.

Now, Your Honor, we recognize the need, the enormity of the tasks that the debtor has been faced with in this huge bankruptcy. And we recognize the need to minimize burden. We filed the 2004 motion in the first instance in November. We received unsurprisingly calls from the debtor asking to adjourn the motion explaining that with the holidays and with all the emergent tasks the debtor could not focus on it. But debtors' counsel said they wanted to endeavor to try to informally give us information responsive to our concerns. We, actually, during those conversations, said that our most important immediate concerns are understanding what exists at LBCS in light of the Barclays press release, whether there's a wasting asset there in the expression Your Honor used this morning, a melting ice cube. We needed to know that. But based on the debtors' representation that they would endeavor to get us at least that information quickly and that they would endeavor to work with us, wee requested an adjournment. We waited -- we agreed to an adjournment to the stay. We waited to hear from the debtors. When we didn't, we asked them are we going to get some information? We never got any such information, Your

Honor. And parenthetically, I should say that when we expressed that concern about the possibility of a wasting asset, at no time did debtors' counsel suggest to us oh, you have no reason to worry because there is no ongoing business. You have no reason to worry because, as we now hear for the first time in debtors' objection, in fact, LBCS had no ability to engage in ongoing business from the moment that LBHI declared bank -- filed for bankruptcy. We never heard that. We never heard that there was no basis for urgent concerns.

When we talked to the debtor and to Barclays' counsel again, we reiterated we understand that there are a lot of burdens here. We understand that it's appropriate to talk about what a reasonable scope of discovery is and what a reasonable schedule is. We asked them to make a proposal in that regard. Instead, on Friday, what we got was the back of our -- their hand, basically. We got, you're not going to get anything. We're resisting your ability to take any discovery into it at all. We've got objections filed by Barclays and the debtor and the SIPA trustee and the creditors' committee. And I'll address the latter two of those in a few minutes, Your Honor.

But let me just -- with regard to the Barclays and debtors objections claiming that we should not be entitled to 2004, I would submit, Your Honor, that those objections are the textbook example of what is not an appropriate way to object to

2004 discovery. You cannot resist 2004 discovery by assuming the conclusion, by assuming that there are no claims on the merits to investigate and therefore you should not be all -- the creditors should not be allowed to take discovery into whether those claims exist. And most certainly, you cannot object by assuming the conclusion and then in support of that making utterly unsupported conclusory assertions of fact in your papers. There is no evidence attached to those papers. But the objections are replete with factual assertions, many times assertions about facts that we never heard before, on several occasions, facts that seem to be completely contrary to what we've seen before.

Your Honor, if all the Court did was to allow us to take discovery into every unsupported factual assertion that's set forth in those objections that would end up being basically the scope of discovery that we sought in the 2004 motion to begin with. We would be able to take discovery into the assertion that LBI had a commodities business which appears to be completely inconsistent with, as I said before, the debtors' pre-petition public statements that LBCS had no ongoing business at the time of the sale which, as I said, we heard for the first time in the objections and which seems to be contradicted by the assertion, the representation that debtors' counsel made to the Court in connection with the sale motion that nothing in the sale would impact the ability of LBCS to

function as an ongoing business. If what they meant was well, we're not mentioning that LBCS has no ongoing business but, in fact, it does have no ongoing business so the sale won't affect that, I would submit that at the very least, Your Honor, that is misleading and cute, way too cute.

We would be entitled to take discovery into the assertion that LBCS did not have its own employees which is contrary to the statement in the offering memorandum in connection with the bonds that LBCS has 200 or had at the time 200 employees. We would be able to take discovery into the assertion that Barclays, in fact, did not acquire any of LBCS' commodities business but, in fact, acquired the distinct business of LBI, commodities business of LBI, which nobody at any time, in these papers or otherwise, has endeavored to tell us, explained to us what is. What is this supposed LBI commodities business? How is it distinct from the LBCS commodities business? Nothing's explained about that.

Those are, in fact, Your Honor, basically the issues that we sought discovery of in the 2004 motion. Your Honor, the laws are very clear. There is a load threshold of basis for believing there may be a claim for a -- to engage in 2004 discovery. We have amply met that.

Now, I want to address the comments made by the unsecured creditors' committee that we should defer to their investigation of these potential claims, not that we have had

any basis to believe that they've engaged in any investigation to date, and the assertion of the debtor that we should defer to the examiner. And obviously, I know, Your Honor, that that's going to be a significant focus of the Court's concern here.

Your Honor, the entire basis of our justice system is the belief that the adversary process and open discovery is the best way to bring out facts and to achieve justice. Bankruptcy is not an exception to that theory. And to the contrary, the bankruptcy process, and 2004, in particular, depends on various different creditor constituencies with their, to use the word that I like and has been used a lot, their parochial interests. We'll pursue those interests vigorously. We'll maintain any -- assert any arguments that can be made on behalf of those. We'll investigate the facts. And wonderfully crowded courtrooms, like this one and the overflow courtroom, are a testament to the fact that you've got lots of parochial interest here.

There is no basis to deprive the parties with their parochial interests of their right to engage in discovery and to force them to defer to proxies, such as an examiner or the UCC, whose interests may or may not be aligned, who have a lot of other interests on their plate. Clearly, the agenda for this examiner is going to be enormous. We cited in our reply brief, Your Honor, the Enron case, a decision from Enron where

Judge Gonzales held that the fact that an examiner had been appointed there did not have any relevance, ability to deprive creditors of their ability to take 2004 discovery. It would only be relevant at all to the extent that it might shed light on whether the creditors have an improper motive in seeking discovery. And I don't think anyone has asserted that the indenture trustee is pursuing this discovery for coercive or harassment purposes.

Your Honor, we tried -- we worked very hard in framing these discovery requests to make sure that they were narrow and avoided undue duplication with other issues in this case. For instance, our discovery requests do not go to the intercompany transactions and intercompany balances that are obviously going to be an enormous task and a focus of many different parties in this case. And I think it's clear we succeeded in making our discovery requests appropriately narrowly focused because not one of the objectors has suggested that our requests were overbroad. Not one objector has pointed to anything about our requests that it was overbroad.

Mr. Bienenstock, who left, so he won't hear me endorsing his views, but he made comments about the nature of the UCC's charge and its status as a fiduciary which I agree with Your Honor's take on but I think I also completely agree with and I think shed light on why we should not have to rely on the UCC to pursue discovery, investigation and any potential

claims here.

THE COURT: Just so I'm clear on what you're saying. The UCC is the Uniform Commercial Code.

MR. HOROWITZ: I'm sorry. Unsecured creditors' committee, I apologize, the creditors' committee.

THE COURT: Okay.

MR. HOROWITZ: I --

THE COURT: 'Cause I am relying on the UCC.

MR. HOROWITZ: I apologize, Your Honor, the creditors' committee. Your Honor, I gave a nonexhaustive list of the potential claims that we think might arise here. And just to -- I think there's a useful distinction. One set of facts might give rise to a view that Barclays got something it didn't pay for and that there needs to be more consideration coming in. I call that a pie increasing type of claim that would bring more money into the estate. But I also suggested that it's possible, the facts will show, that Barclays paid for the business but that LBCS was improperly excluded and LBCS should have a direct claim on its allocable share of the proceeds. That is what I would call a pie splitting type of claim. And I do not think it is the province of the creditors' committee to investigate and reach positions as to allocation among different constituencies. It also happens to be true that the creditors' committee was formed before LBCS was in bankruptcy and, as a factual matter, does not have anyone on

there that represents LBCS' interests. But, like Mr. Bienenstock, I do not rest my view that we should not be forced to defer to the creditors' committee on that basis.

Your Honor, the fact that I put in a pitch that parochial interests should be entitled to pursue discovery should not mean in any way that I believe that parties should be allowed to run amuck and engage in duplicative discovery and, basically, subject the debtor and other parties in this case to unbearable burdens. I don't think there's been any showing that the limited discovery that we are requesting would be unduly burdensome or duplicative. If, for example, Your Honor, the examiner does wish to examine the issues that are of concern to us, the examiner will request from the debtor and from Barclays precisely the same information that we're requesting, so likewise with the creditors' committee. It will not be any greater burden for the debtor and Barclays to collect that information and deliver it to us than it simultaneously, seriatim, and to the examiner than it would be simply to give it to the examiner. Conversely, I would actually suggest that if they're interested in examining those issues, and I hope that they are, the easiest way for them to start is by piggybacking on our discovery by looking at the information that we've identified and that we will be collecting.

So I agree that it is important to make sure that

things are coordinated. I agree that it's important to avoid duplication but we've narrowly tailored these discovery requests. We have ample basis for seeking it. And the proxies are not an adequate substitute for that.

THE COURT: I don't understand why proxies are not an adequate substitute. I understand your position that you think that Bank of New York Mellon as indenture trustee should be leading the way here on behalf of its constituency. But in what respect is that constituency disadvantaged if another party in interest, say, the examiner, which will be treated as a party in interest under the order of appointment, elects to do that investigation and you get the benefit of that investigation? What's the difference other than we avoid having a proliferation potentially of what you have called yourself parochial interests that become actively involved in the pursuit of that which is private to the ultimate detriment of that which is the collective good.

MR. HOROWITZ: Well, you asked the question about the examiner and you deserve an answer with regard to the examiner. I did give an answer with regard to the creditors' committee as to why I believe that they are conflicted. With regard to the examiner, the answer is a matter -- first of all, a matter of focus, Your Honor. The examiner has an awful lot -- will have an awful lot on his plate or her plate. And will not be incentivized to focus on these parochial issues the way that we

are.

THE COURT: But why is it a question of it being incentivized? It's a question of duty. If the examiner, whoever this person may be, is given a mandate to investigate and investigations presumably will focus on all matters relevant to the mandate, which includes what you're concerned with, how are you hurt? And also, what makes this time sensitive? Why do you need to know this now?

MR. HOROWITZ: I agree it is not time sensitive. I started out by explaining to you the chronology of our attempts to negotiate with the debtors and Barclays. And we did --

THE COURT: I understand you are frustrated by the fact that you have not received the discovery that you hope to receive, that you have been cooperative in agreeing to adjourn this so that it's being heard today. And it just happens to be heard after an examiner has been appointed.

MR. HOROWITZ: My point was slightly different.

THE COURT: So the examiner is obviously fresh in my mind.

MR. HOROWITZ: No. My point was slightly different, though. We were asking, inviting proposals with regard to timing. And if the proposals had been we're going to be collecting information with regard to an examiner's process. It makes sense to coordinate with that. That would have been a perfectly legitimate answer. We are perfectly willing to

consider all proposals with regard to timing including this may have to wait two or three months. I'm just guessing, Your Honor, as to what the time frame would be. My point was that the debtors' and Barclays' position was not one relating to why this is time sensitive. It was you're not entitled to this now or ever. You have to defer permanently, basically, as I understood the position.

I also want to go back to the examiner because I think it's a more basic point, Your Honor.

The examiner is, to some extent, is expected to be unbiased. I think that's part of the --

THE COURT: Not to some extent.

MR. HOROWITZ: Okay. Let's say --

THE COURT: Absolutely needs to be unbiased.

MR. HOROWITZ: Well, let me go back to my comment about the adversarial process. The adversarial process depends on parties not being unbiased. It depends on vigorous advocacy, on parties will collect information and place it -- and make all of the zealous arguments they can in support of their position. That is a fundamentally different role --

THE COURT: I think the zealous advocacy follows the discovery. It doesn't have to be a condition to the discovery.

MR. HOROWITZ: Well --

THE COURT: Because we talked about this subject before lunch, the subject of a point of view. Or maybe we

talked about it right after lunch when I was talking to Mr. Dunne. The issue of advocacy, I think, should not be confused with the issue of entitlement to discovery on a particular schedule. And in addition to the discretion which the Bankruptcy Code affords the Court with respect to the appointment of an examiner, at least as it relates to scope. The Bankruptcy Rules under 2004 also give the Court vast discretion when it comes to allowing discovery. Generally speaking, it's freely allowable provided, however, that when that discovery is ultimately duplicative or potentially a source of disruption, I have the power to control, among other things, the timing. So you've already acknowledged during the course of our discussion that there's actually no time sensitivity to the need to find this out. And it's also probably true that there's no difference really if the facts are discovered by an examiner or discovered by you. Is there a difference?

MR. HOROWITZ: Now that I do disagree with, Your Honor. In just the same way that you suggested that there's no such thing as pure neutrality with regard to recitation of facts in an examiner's report. It is also true that discovery is not a neutral process. That a party that is incentivized to develop arguments as strongly as possible. This has certainly been my experience in all my years as a litigator. We'll be more focused on pursuing the facts relating to those particular

issues. We'll do a more effective job. That's really the reason, basically, Your Honor, why we have an adversarial as opposed to an inquisitorial type model like in Europe model in the United States for justice. We depend on people who are incentivized in the discovery process as well as in advocacy process. And, you know, the bondholders are going to be footing the bill on this. They are not incentivized to spend more money than is necessary or appropriate to this.

I also -- I certainly agree with Your Honor that you have the discretion to do whatever is necessary to ensure that this is not overbroad or unduly burdensome and to ensure that it's timed correctly but -- which is why I tried to emphasize that we made every effort to make these narrow requests. And I invite Your Honor to look at the requests. I think you'll see that they are quite laser like and specific to these issues.

THE COURT: Look, I think I understand fully the reason why you're pressing this motion. And I'm going to give those who are opposed to it a chance to be heard if they wish to be heard.

MR. HOROWITZ: Thank you, Your Honor.

THE COURT: I do have some comments, though, before you leave the podium. I originally thought that there was an issue here as to whether or not you were seeking discovery that was even within the scope of Rule 2004 and I'll tell you why. Nobody raised this point. It's a subtle point that I probably

have wrong. Because the sale hearing occurred at a time when the borrower that you looked to was not a Chapter 11 debtor, the presumed transfer of assets took place as it relates to nondebtor property. In fact, your entire focus relates to nondebtor property and the potential impermissible transfer of nondebtor property by the sale order which led me to question whether or not the discovery that you seek is even properly within the scope of Rule 2004. No one has raised that issue. But I've thought about it. And before you sit down, I'd like you to comment on it. in what respect is the subject matter of your discovery, even though you articulate that it's clearly covered by Rule 2004. Explain to me why it is.

MR. HOROWITZ: Well, Your Honor, LBCS is now a debtor.

THE COURT: Yes. But this all relates to a time when it wasn't a debtor.

MR. HOROWITZ: Okay. My understanding of 2004 is that it is not limited to discovery of post-petition facts but it is limited to discovery relating to claims that might exist on behalf of the debtor or on behalf of the debtors' creditors which the bondholders currently are. If, for example, we are correct, one hypothesis is correct, that LBCS's business pre-petition nondebtor was transferred and therefore LBCS has a claim and quantum meruit, whatever the appropriate legal theory will be against Barclays. That is now a claim belonging to a

debtor, LBCS, and therefore I think 2004 is clearly appropriate for investigating whether such a claim exists.

Also, to the -- if they're backs could give rise to successorship liability, that would affect the liabilities to the debtor because if the bondholder claims simply pass through with the business, there would no longer be liabilities at LB. So these are two different hypotheses -- potential causes of action that are within the ambit of what 2004 is legitimate to discovery.

THE COURT: Are the bonds that you represent secured in any way?

MR. HOROWITZ: I have to admit, I don't know the precise answer to that question, Your Honor. I believe the answer is no. I do believe that LBCS is a guarantor of the special purpose entity that issued the bonds and then there is additionally a guaranty from LBHI.

THE COURT: And do the bonds have recourse to any other Lehman affiliate other than LBCS?

MR. HOROWITZ: And on the guaranty to LBHI, no, my understanding is they do not.

THE COURT: There's an LBHI guaranty?

MR. HOROWITZ: There is an LBHI guaranty.

THE COURT: Okay.

MR. HOROWITZ: And were there any other comments?

THE COURT: No. Thank you.

MR. HOROWITZ: Thank you.

MR. MILLER: Your Honor, please, Harvey Miller. Your Honor, this is a matter of case administration really. Counsel has conceded that this is not time sensitive. And Your Honor has to bear in mind that LBHI has 4,000 subsidiaries. Your Honor has to think in the context besides -- anybody could come into this Court and say they're entitled to a investigation -- not an investigation, an examination under Bankruptcy Rule 2004. And as Your Honor may recall, we did have a plethora of motions made earlier in the case. And it really gets down to a question of bandwidths. First, Your Honor, there is no absolute right on the part of a creditor or any other party to conduct Rule 2004 examinations. And we constantly use the terminology "discovery". Discovery in what context, Your Honor? Unfortunately, I'm old enough to know the derivatives from which 2004 comes from. Its original form was Section 21(a) of the old Bankruptcy Act and the purpose of that section Your Honor was because when a trustee was appointed to become the fiduciary for an estate, generally, when the trustee got there, there was nobody there. There was nobody to talk to about where are the assets, what happened to them. So 21(a) was a fishing expedition pursuant to which a trustee could get a subpoena, get the form of principals of the debtor and examine them as to what happened to these assets. It was -- and, in fact, Your Honor, the transcript or the discovery as

you call it, coming out of the 21(a) or I think it was Rule 2014 or something under the old rules are not even admissible in a proceeding except for the purposes of impeaching a witness. And the Rules of Evidence don't apply in a Rule 2004 examination. It is a pure fishing expedition. And what counsel is talking about is trying to find enough facts to support a cause of action on behalf of the bondholders. That's not what 2004 was intended to do. It was intended to benefit the estate in finding information that gave rise to perhaps claims on behalf of the estate not on behalf of bondholders, Your Honor.

And it's the record to the discretion of the Court. Now we have an examiner. We don't know who it is yet. But we will have an examiner. And within the charter of this examiner and discussed heavily this morning is whether assets and properties which would improvidently transferred to Barclays. That is the issue, Your Honor.

Now, in the context of what happened over the past few weeks with respect to this request, it's again a question of bandwidth, Your Honor. Your Honor will remember the first month of this case. People were stretched all over the place. And it is only recently that, as Mr. Marsal explained this morning, that he has the 509 employees that can deal with all of the problems. But this was not on the very top priority list, Your Honor. And effort has been made to get the

information. Most of the information, Your Honor, is not in the control of the debtors. It's in control of Barclays. This is a matter that's going to get from what I heard this morning and what I hear from people, Your Honor, is going to get a lot of attention. What assets went over to Barclays? Was it consistent with the sale order or did assets improvidently get granted? And I would submit, Your Honor, that this can be deferred until the examiner looks at it without increasing further pressure on the debtor which is still stretched with 509 employees and still doing lots of things, Your Honor. And that's all I'm suggesting to Your Honor. This is an administrative matter and it shouldn't be used for a litigant to get facts to support an action for the benefit of a specific group of bondholders. Thank you, Your Honor.

THE COURT: Thank you. Others wish to be heard? A lot of people are getting up.

MR. HUME: Your Honor, very briefly. Hamish Hume, again, for Barclays.

We agree strongly with the points made by Mr. Miller. And I would just reinforce the original purpose of the statute is not to allow an individual bondholder to develop claims. More to the point, it was not to allow an individual bondholder to develop claims against someone other than the debtor, against an outside party against Barclays which is what Mr. Horowitz said was the principal focus of their discovery.

Your Honor, this morning you decided -- or earlier this afternoon, that the examiner would look at this issue of whether -- that Mr. Miller referred to in terms of assets of non-debtors being transferred. Given that you've already indicated that an examiner will look at that, I think the issue presented by Mr. Horowitz' motion is should everyone else get to look at, too, in discovery? Or is there something special about the Bank of New York motion that says they should get to look at it on their individual subsidiary, but no one else should. And I didn't hear an argument for why they should be treated differently from other 2004 creditors' requests.

And so we would take exception to it and ask to minimize the burden, Your Honor would take that into account.

THE COURT: Okay, thank you.

MR. WILTENBURG: Good afternoon, Your Honor. David Wiltenburg, Hughes Hubbard & Reed representing the SIPA trustee.

Just briefly, we've objected to the relief sought on the additional ground that a subpoena directed to Mr. Giddens would not be well calculated to lead to useful information.

As the Court is aware, the trustee was not an architect of the transaction that is the subject matter really of this request. And all of the LBI employees who were, in fact, involved in that process are now not employees anymore of the LBI estate but employees of Barclays. So on that ground,

we've objected.

MR. TECCE: Good afternoon, Your Honor. James Tecce of Quinn Emanuel on behalf of the creditors' committee.

Very briefly, Your Honor. The committee agrees that the facts and circumstances surround the seal transaction warrant investigation. And there's been discussion this morning and this afternoon as to whether that investigation would be subsumed by the examiner. Whether the work plan ultimately meets that out, that may or may not be the case.

But the reason why the creditors' committee filed a limited objection that it did is because up until this point in time the committee has been very focused on this issue of the assets and the liabilities that were transferred to Barclays in connection with the sale transaction. The Court will recall it was the last omnibus hearing where the committee had appeared to pursue a limited objection to a settlement of a certain portion of that transaction assets that were transferred. And the committee's position was that it was conducting an investigation and didn't want any factual findings made in connection with that settlement to somehow interfere with that investigation.

And recognizing that investigation I think the Bank of New York's trustee's position is that somehow the committee's investigation of the sale transaction will not serve its purposes because it will not focus on the LBCS

estate. But the committee's investigation is not monopoly focused on a single debtor or a single group of creditors. It seeks to examine any and all assets that were transferred to Barclays in connection with the sale. And any and all liabilities that were assumed in connection with the sale. And it's motivated by a purpose and a concern that should be shared by all creditors irrespective of the estate against which they would assert a claim, which is insuring that the final reconciliation and the final determination of that investigation comports with the sale order and the contours of that transaction as it was represented to the Court and to the committee.

As a consequence to that, Your Honor, we would submit that the committee has -- and once more, Your Honor, I just note that the committee has expended time already looking into this matter. The Court may recall it's suggestion at the last omnibus hearing was that the committee attempt to consensually secure the information that it needed to conduct that examination. And adhering to that direction since the last omnibus hearing, we have -- or at least the committee's professionals have met with Barclay's professionals to try and secure information that will aid in that investigation. And while we would like to reach an agreement with them, and hopefully we will in the unfortunate universe where we don't reach an agreement with them, we'll be poised to pursue that

information through other channels.

So as a consequence, Your Honor, it would be our position that the committee is in place on this, should not be displaced, and that lesser requests for discovery should be channeled through the committee given its investigation of the sales transaction.

And unless Your Honor has any other questions, that concludes that my presentation.

THE COURT: No, that's fine, thank you.

MR. TECCE: Thank you.

THE COURT: Anything more? Mr. Horowitz, you're --

MR. HOROWITZ: Just a couple of comments. I just realized that I hadn't addressed the SIPA trustee's issue when I got up before, Your Honor.

If it is true that the reason that we included the SIPA trustee was because we thought there was a possibility that the relevant information would be with LBI. That possibility seems a little greater in light of the assertion that LBI had a commodities business. But if, as the SIPA trustee asserts, the relevant information isn't with them, it would presumably be very easy for them to simply respond by saying that they don't have the information. And we would not have a problem with that. In fact, we think that's consistent with what our suspicion is to what the facts are.

I didn't hear anyone who got up here, Your Honor,

explain why it would be unduly burdensome to provide us with the information relating to these issues at the same time that its provided to either the committee and/or the examiner.

And, finally, Your Honor, I did not get up in connection with the examiner motion. First of all, I probably didn't have standing to.

THE COURT: You're right, you didn't have standing to.

MR. HOROWITZ: What's that?

THE COURT: You're right; you did not have standing to.

MR. HOROWITZ: And I'm saying this entirely without prejudice to the position that we very strongly take that we should not be forced to defer to the examiner, but in the event that Your Honor does conclude that we should defer to the examiner, I would point out that then we've sort of unwillingly become a party to the examiner process and we should be included in the meet and confer and be allowed to have some input into the way that that process works.

THE COURT: Okay, I understand your position.

MR. HOROWITZ: Thank you, Your Honor.

THE COURT: We've been dealing with 2004 requests since the second week of the case. I can remember that on either the Monday or the Tuesday following the week of the teleconference with Mr. Miller and other parties-in-interest,

including dealing with the Harbinger 2004 requests. And how to deal with certain case management issues that were manifest even in the second week of the case.

We've come a long way, but in certain respects we haven't. We're still dealing with 2004 requests. And I think that certain 2004 requests are to be distinguished from others. In the SIPA case I wrote a very brief opinion granting the motion for 2004 discovery brought by the DCP parties seeking the discovery of certain targeted information that was clearly relevant to the representation of that group, at least in my opinion it was.

I mention it because I don't think there is one law of the case determination that applies to 2004 discovery. In some respects it may be permissible based upon the needs of a part for cause shown. In some respects it's a source of interference, and the proliferation of costs, delay and undue expense.

This is a close question in my view. The fact that the committee has weighed in in opposition to their request, the fact that the debtor has weighed in in opposition to their request, in my view goes much more to orderly case administration than it does to the entitlement to take the discovery in the first instance.

When I first reviewed this contested matter, it was my initial inclination to believe that the issues surrounding

the transfer of the commodities business to Barclays represented a subject matter that might be profitably explored privately, parochially, if you will, by counsel for the indentured trustee. I understand the reason why the indentured trustee is pressing this; it's consistent certainly with the fiduciary duty of that trustee. But my thoughts on the matter have changed as a result of today's hearing.

The principal reason for my change of perspective is the extensive argument that took place in reference to the motion for appointment of an examiner. During the course of that argument I made clear and others appeared to concur with my state of mind on this subject, that multiple examinations of the same subject matter represented a remarkably inefficient cumbersome and potentially destructive use of attorney time. We haven't even yet reached the subpoenas to be issued by Mr. Giddens in support of his own independent examination. And I'm sure we'll address that before too long.

So in this setting in which I have been approaching case management issues from the perspective of how can we best deal with the needs of this case, which are in some respects exceptional, I conclude that 2004 discovery of the type sought by the indentured trustee in this instance does not need to be pursued now. Indeed, in colloquy with Mr. Horowitz, he confirmed that the need for the information was actually in no respect time sensitive. As a result, what I'm going to do is

to deny the 2004 request without prejudice to its being reasserted in the future in the even that the information sought is not otherwise forthcoming by virtue of the work of the creditors' committee or the work of the examiner.

Counsel for the committee has stated that the committee is involved as an estate fiduciary in an examination of the facts and circumstances surround the sale of debtors' assets to Barclays. That investigation would appear to subsume many of the same issues that are the subject matter of the pending 2004 request.

Additionally, the argument with respect to appointment of the examiner made clear particularly since the motion was first filed by the Walt Disney Company, that the examiner will be looking into questions of whether or not assets of non-debtor affiliates somehow made their way over to Barclays at the beginning of the case under the authority of the September 20 sale orders.

Under the circumstances, it seems to me that we have one examiner and one creditors' committee that will be dealing with the very same subject matter. Admittedly, they will be dealing with that subject matter not from the perspective of a zealous advocate. And no doubt Mr. Horowitz would be doing this discovery as a zealous advocate. But zealous advocacy is not a requirement to obtain information. I believe under the circumstances that it makes good sense for the case as a whole

for particularized requests for information to be put to one side and not to become the subject of ongoing contested matters in this Court unless exception circumstances can be shown. I believe that no exceptional circumstances have been shown here. But that does not mean that the indentured trustee is not entitled to have questions answered in due course. And I expect that those questions will be answered at some point over the next several months.

In the event that those questions remain outstanding, counsel for the indentured trustee should feel completely free in reasserting its 2004 request and nothing that I've said here is intended to deprive the indentured trustee of the ability to later attempt to assert that the circumstances, in fact, are exceptional. And that such particularized discovery is, as a result, appropriate.

That's my ruling.

MR. HOROWITZ: Your Honor, I ask if we could participate in the examiner meet and confer.

THE COURT: Well, see that's a subject which is no longer before me. My inclination to that is no. And it's no for several reasons. First, as you pointed out in your own comments a few minutes ago, you did not have standing to appear and be heard with respect to the examiner motion because you did not intervene in that proceeding. Secondly, you are not exceptional as it relates to the multitude of individuals who

have curiosity as to the process, or more to the point, a desire to influence the process. I believe this is a situation in which fewer cooks will make a better broth. So that request, at least as it relates to me, is denied. If anybody is willing to give you access that's up to them.

MR. MILLER: Yes, Your Honor. Item 15 on the agenda is the debtors' amended motion, Your Honor, to further extend the time for the debtors to file schedules, statement of financial affairs and related documents.

This is I think the third request, Your Honor. There have been 105 days which were previously extended. The debtors are asking for an additional sixty days, Your Honor. In light of everything that transpired today, I will not belabor the issue that it is an enormous task to do the schedules, the statement of affairs and the statement of executory contracts.

I would also say, Your Honor, that as Mr. Rivera pointed out -- Mr. Velez pointed out rather, there is constant communication with the Office of the United States Trustee as to the filing of reports, information, etcetera. In the context of where we are, Your Honor, the debtors believe that within sixty days they have a real opportunity to complete this this time.

Thank you, Your Honor.

THE COURT: Okay.

MR. DUNNE: Your Honor, Dennis Dunne on behalf of

the Official Creditors' Committee, which is the OCC I think.

We filed a position statement and we were urging some disclosures earlier, as soon as appropriate, as part of that statement. But that pleading was part of a broader agenda. I mean, since the very early days of the case we have been urging the debtors to file financial information publicly. Our constituents have been starved for that information. The debtors have shared that goal all along but it took a while to assemble the date in a form that was appropriate to disseminate. But we all saw the fruits of that shared goal today. And that was, frankly, a larger objective for the committee. And this is a long way of me saying we withdraw our response and support the debtors.

THE COURT: All right. Mr. Sabin, this may make you the lone objector unless you're prepared to withdraw your objection now.

MR. SABIN: Your Honor, we had alternative relief also requested as part of our objection. And, obviously, I think the filings today, which are made public by Mr. Marsal and the report by Alvarez, go a long way. In fact, borrowing the term of this global case, perhaps it's a universal case. As I recall that first step on the moon, "it was one giant leap forward," and I think the filing today is one giant leap forward in terms of information available for transparency in this case. So I do ask this Court to take Mr. Miller, and the

debtors, and Mr. Marsal at their word and hopefully say it is one last time. And by sixty days you will file your schedules. Or, at least, monthly reports during this period. Thank you, Your Honor.

THE COURT: Okay. Thank you, Mr. Sabin.

It's not quite uncontested at this point. But it appears that it's largely consensual. I'm going to grant the extension with the knowledge that while it is debtors hope that this is the last such extension, given the volume of information which needs to be collected, comprehended and reported, it's at least conceivable that we may have another hearing at which somebody's asking for more time. I think that the themes present in both the committee response and the Harbinger objection recognized that the task associated with the assembly of information for the schedules and statement of financial affairs in the instance of these jointly administered cases, represent an absolutely enormous unprecedented undertaking. And that the volume of information to be sliced and diced and reported probably goes beyond that that has ever been the subject of schedules in any other case anywhere.

But it's also true that they are not only mandated as a matter of law, but these documents represent an important resource for creditors. The report that was prepared and delivered by Mr. Marsal this morning was, indeed, a giant step forward in terms of transparency and providing information

concerning what the report, itself, describes as the "state of the estate." But it's not the functional equivalent of schedules and a statement of financial affairs. And Mr. Marsal, by his own comments during the presentation this morning, made clear that many of the numbers that are set forth in this report are subject to adjustment. Additionally, these are very much top line type numbers as opposed to the kinds of detailed disclosures that one would expect on a line-by-line basis in the schedules and SOFA.

I'm granting the motion but I'm also going to make what is not a direction as much as it is a strong case management request. I believe that the interest of transparency will be substantially advanced if we don't have to have another hearing such as this relating to further extensions.

Additionally, and to state the obvious, at some point as the saying goes, it gets old, it gets old to talk about how big the case is. It's one really big case and we all know it. But if we're really going to mover forward on what I view as the ambitious and aspirational schedule laid out by Mr. Marsal this morning in terms of exiting bankruptcy, the sooner the schedules and the statement of financial affairs are done and filed and available for examination, the sooner we're going to be in a position to determine whether or not that aspirational goal for exiting bankruptcy is anything close to realistic.

And so the motion's granted with the general commentary that I hope it is the last time that I have to grant such an extension.

MR. MILLER: Thank you, Your Honor.

MS. MARCUS: Good afternoon, Your Honor. Jacqueline Marcus, Weil Gotshal & Manges for the Lehman estate.

Your Honor, the next matter on the agenda is number 16, which is the notice of presentment of stipulation and order providing for Lehman Brothers Inc. to assume and assign administrative agency agreements to LCPI.

In light of the hour, Your Honor, I'm not going to give you the background unless you want it.

THE COURT: I don't.

MS. MARCUS: One objection filed. And the party that filed the objection, U.S. Bank, whose counsel was on the phone, may still be on the phone, has authorized me to advise the Court that they are withdrawing the objection provided that I read a statement into the record.

THE COURT: Before you read that statement into the record, let me simply ask if counsel for U.S. Bank NA is still on the line listening into these proceedings?

MR. TOP: Your Honor, we are.

THE COURT: And who are you?

MR. TOP: My name is Frank Top from Chapman & Cutler on behalf of U.S. Bank.

THE COURT: Okay. Apparently, you're going to be in a position then to speak up if what Ms. Marcus says on the record is anything other than what you've agreed.

Go ahead, Ms. Marcus.

MS. MARCUS: Okay, Your Honor. "The stipulation is solely intended to assign the rights and obligations of LBI to LCPI under the administrative agency agreements. Nothing in the stipulation shall affect or act as a waiver or forbearance of the obligations of the parties, including without limitation, LBI, LCPI or other Lehman affiliates under any transaction documents relating to CDO transactions. And nothing in this stipulation shall affect or act as a waiver or forbearance of the rights of any holders of interest in CDO transactions."

Based on that that, Your Honor, the withdrawal of the objection, the notice of presentment is, in affect, unopposed, and we would request that the Court approve the stipulation and actually enter it in both the LBI and LCPI cases.

THE COURT: Is that acceptable to counsel for U.S. Bank NA?

MR. TOP: Your Honor, on behalf of U.S. Bank NA as trustee, we concur with the debtors' presentation.

THE COURT: Fine. I will treat it now as an unopposed stipulation and agreed order. And I will enter it in due course.

MS. MARCUS: Thank you, Your Honor.

The next item on the agenda, number 17, is the debtors' second motion for an order approving the assumption of open trade confirmations. This motion is virtually identical to the first open trades motion. It just refers to or deals with some additional trades, I think there were about fifteen originally that were filed later.

We have received two objections. One by GE Corporate Financial Services on behalf of Fusion Funding. And one by Hartford Investment Management Co. The debtors have not been able to resolve the disputes with those two parties yet, but we're hopeful that we'll be able to do so. Therefore, the debtors request entry of an order approving the second open trades motion as to those parties who have not objected and adjourning the hearing with respect to the GE Fusion Trades and the Hartford Trades to January 20th.

THE COURT: Is there any objection to what's been proposed? I can't imagine that there would be because it only applies today to those parties that don't object.

MS. MARCUS: And there were only, I believe, three trades that weren't objected to.

THE COURT: That's fine.

MS. MARCUS: And we'll submit an order at the conclusion of the hearing.

THE COURT: Please do.

MS. MARCUS: Number 18, Your Honor, is the infamous debtors' motion for an order assuming the assumption or rejection of open trades.

This matter includes the remaining objections to the first open trades motion which was filed on November 14th. Since the last time we were here on December 22nd, the debtors have entered into letter agreements provided for resolution of their disputes with the following entities, MS International, JPMorgan Chase, Tannenbaum Capital, Evergreen Investments, Wachovia Bank NA, Bank of America NA, Putnam Investments, and M&G Investment Management Ltd.

In addition, we have resolved disputes with three additional parties through the withdrawal of objections or portions of the motion. And those are Fur Tree, which has agreed to withdraw its objection. Fur Tree's counsel was here earlier but left. Subject to the inclusion of some additional language in the first open trades order, and I would like to refer to the Court to what that language is going to be. Fur Tree is going to acquire at least one of the debt positions by participation from LCPI. They are prepared to do that and they have requested that the order provide that any distributions received by LCPI in respect of Fur Tree's piece of that debt be deemed not property of the estate. The debtors have taken the position that that would not be property of the estate. And I believe that committee counsel concurs with that conclusion.

And, similarly, because some of these loans are revolvers, Fur Tree would actually be advancing revolver draws to LCPI which would then be sent to the respective borrower and they'd ask for a determination that that doesn't constitute property of the estate. The debtors are fine with that and we would like to submit an order to the Court later this afternoon which includes that language.

The other two objections that have been resolved are the debtors had requested some relief with respect to some open trades having to do with H2. The debtors have been persuaded that those trades, perhaps, were not fully documented and the debtor is prepared to withdraw its request with respect to the H2 trades. And has taken those trades off the motion.

And, finally, the third one P. Schoenfeld Asset Management has agreed to withdraw its pending objection. So that one would be resolved as well.

I would like to list for the Court's benefit a number of parties with whom we are still conducting negotiations. We're hopeful that we'll be able to reach settlements with many, perhaps not all of these parties. And those are Deutsche Bank, Citigroup Inc., Goldman Sachs, Whippoorwill Associates, R3 Capital Management, AIB International Finance, Lloyds TSB Bank, AXA Mezzanine II SA and it's affiliate, Avenue Investments, and KKR Investments.

And the last two, Your Honor, are two remaining

objectors with whom the debtors have reached an impasse. The debtors believe, and I think the counterparties agree, that the time for adjourning with respect to these two parties is past and that we should move forward.

One of those is Blue Mountain. And as to Blue Mountain we're going to agree on a discovery schedule and ask the Court to set a hearing for the trial on the merits. And the other is Field Point and the Field Point controversy is a little further advanced. We have already agreed on a discovery schedule and I've been asked to request a hearing -- a date for an evidentiary hearing with respect to Field Point. And we have certain dates in mind. Field Point's counsel was here as well, I think they have gone, but the gave me the dates. So if we can agree on one of those dates subject to the Court's convenience, otherwise I'll have to go back to Field Point as to a date.

THE COURT: Let me just confirm. Is anybody here on behalf of Field Point? Apparently not. Is anybody here on behalf of Blue Mountain?

MR. KIZEL: Yes, Your Honor.

THE COURT: First of all, I'd like to confirm. And this is just a yes or a no or a maybe. Is it, in fact, true that based upon where things stand with the debtors that you are, in fact, at impasse as has been suggested?

MR. KIZEL: Paul Kizel from Lowenstein Sandler on

behalf of Blue Mountain.

Your Honor, we have engaged in some negotiations with the debtor. We believe, as debtors' counsel stated, that there is an impasse at this point. And we believe the most expeditious and truthful process is to set a discovery schedule, set a trial date. We're not saying that the possibility of a settlement is nil, but at this point I think the most expeditious way to resolve the matter is to set a trial date and a discovery schedule.

THE COURT: Okay. From my perspective, although this is a contested matter, what effectively is taking place is that you are converting it into something akin to an adversary proceeding in terms of its practice. It would be helpful to me for there to be something like a pre-hearing or pretrial order crafted by the parties that lays out not only the discovery schedule, but also lays out the possibility for dispositive motion practice with respect to that discovery in the event that one party or the other concludes, as a result of such discovery, that this matter can be decided either on agreed facts or as a matter of law. I'd like you to do that.

Additionally, because this is but one of a multitude of open trades items, I can't tell you that I, sitting here, know the specifics of Blue Mountain Credit Alternatives Master Fund LP's issues or why you have distinguished yourselves by being among the few parties not to be able to work this out.

So it would be helpful to me to understand what the issues are. I don't need to know that now. As part of your submission, which will be made in establishing a schedule, I would like there to be some pretrial statement of the nature of the factual and legal disputes as between the debtor and Blue Mountain. Only that way will I have a fair appreciation of why this kind of effort is going into this one aspect of this particular motion. That's not to suggest for a moment that the effort isn't appropriate, I just don't know what's going on at the moment. And given that we have still a full courtroom and it's ten after four in the afternoon, I think that putting this into some kind of orderly process makes sense. Do you agree?

MR. KIZEL: We agree, Your Honor. And we'll work cooperatively with debtors' counsel to do that.

THE COURT: Fine. The same will apply to Field Point.

MR. KIZEL: Thank you, Judge.

THE COURT: Thank you.

MS. MARCUS: Just as a point of clarification, Your Honor, I assume that the Court doesn't want to set a date until you hear from us with respect to a pretrial order?

THE COURT: I don't want to set a date until I know that the date makes sense.

MS. MARCUS: Okay.

THE COURT: And the parties are probably best

equipped to do that. I think that you can work out, as sophisticated counsel on both sides of the table, the terms of a discovery schedule that makes sense, a time for submission of written statements describing the legal and factual issues, and a proposed time for either dispositive motions or trial. I am assuming, however, that when we're talking about trial time we're going to push this into the non-omnibus hearing phase. Or it will be at the end of an omnibus calendar. Depending on the amount of time that's involved, it seems to me that it may be best to give this some time all by itself for purposes of an evidentiary hearing.

MS. MARCUS: That's fine with us, Your Honor.

THE COURT: If it's going to be argued as a dispositive motion, it can be on the omnibus calendar.

MS. MARCUS: That's fine. We had assumed based on your prior statements that you didn't want it to be handled as part of an omnibus hearing. But either way is fine with us.

THE COURT: If it involves the taking of evidence, not part of the omnibus calendar. If it involves simply legal argument, the omnibus calendar works.

MS. MARCUS: That's fine. Thank you, Your Honor.

Number 19, Your Honor, is the continued hearing on the debtors' motion to establish procedures for the settlement or assumption and assignment of pre-petition derivatives contracts.

The supplemental order on this motion, Your Honor, was filed January 13th, which I think was yesterday. It doesn't change any of the substantive terms of the order that was signed on December 16th. But it provides that the December 16th order, in affect, applies to nine additional counterparties with whom we have been able to agree that those procedures are appropriate.

The one change in the order that we'll submit this afternoon from the order that was filed yesterday, is that there was one party, Toronto Dominion Bank, who, although we think we'll reach agreement with, wasn't prepared as of last night to give its blessings and, therefore, asked us to take them off this order and presumably we'll deal with them next time.

As to the remainder of that motion, Your Honor, I think we should adjourn to the January 28th hearing.

THE COURT: That's fine. One question. I think it's right that we had Mr. Brozman in on the derivative contracts matters in December. And he was talking in terms of a major evidentiary hearing today. Whatever happened to that?

MS. MARCUS: I have been told that Mr. Brozman's clients are within this group of nine that are now on board.

THE COURT: There you go. Okay.

MS. MARCUS: Thank you, Your Honor. With respect to the adversary proceedings, I think Mr. Lucas is going to take

over.

THE COURT: Mr. May and Mr. Lucas.

MR. LUCAS: Your Honor, John Lucas, Weil Gotshal.

Today, Your Honor, is the first pretrial conference in Federal Home Loan Bank of Pittsburgh v. Lehman Brothers Special Finance Inc.

THE COURT: It's actually the second. It was heard in December and it was adjourned to today so that parties would have sufficient time to talk about a rationale schedule.

MR. LUCAS: And that's just what we've done, Your Honor. The parties have had their Rule 26(f) conference and they've agreed that the discovery will be completed by 8/4. And all dispositive motions will be done by Rule 56 and will be completed by August 31s. And that the parties suggest that the next pretrial conference will be held on or about November 2nd, subject to the Court's calendar and whatever the applicable omnibus date is. And that we will submit a stipulation memorializing what I've just presented to the Court.

THE COURT: It seems like a lot of time to me. Why is that much time needed?

MR. MAY: Your Honor, Lawrence May of Cole Schotz Meisel Forman & Leonard. We're attorneys for Federal Home Loan Bank.

We originally had a shorter discovery schedule but then the parties --

THE COURT: That's a better one. A shorter one is a better one. This is not a good pattern.

MR. MAY: Then the parties had some discussion with respect to expert -- possible expert testimony and expert reports. And that's why we pushed out the discovery schedule. But we're prepared if the Court believes that this discovery should be done --

THE COURT: I have no special insight as to the problems you may be encountering in either lining up experts or what the expert issues may be. And it's not my practice to interfere with the consensual scheduling of things by counsel in adversary proceedings. But I would simply note this is January and November is a really long way off. We're talking about next Thanksgiving?

MR. MAY: What we had discussed with both, counsel for the debtor and counsel for JPMorgan, was a discovery cutoff by August 4th, dispositive motions by August 31st, and a final pretrial conference, should one be required, early November or earlier depending upon what the Court's schedule was.

We wanted to push the final pretrial conference out sufficiently beyond the dispositive motion date so that the Court would have an opportunity if such motions were made to review them in advance of that final pretrial.

THE COURT: I hear you. My immediate reaction to this is this should be done over again. And you should rethink

the dates. I think that there's much too much time between the commencement of the proceeding, it's been pending for a while now and the proposed completion of discovery. Absent some reason to think that there are extraordinary facts, and I know a little about this, because I heard the motion that was pursued by Beverly Mann in respect of the modification of the sale order a number of months ago. This seems to be pretty straightforward to me. And I don't believe it is a good practice for this much time to be allowed for discovery that as far as I can tell, shouldn't be all that complicated.

So I'm not going to ask you to come back to do it, I'm going to suggest to you that without arbitrarily imposing deadlines, that I don't think the discovery schedule should be longer than 120 days. And that's really generous, I think it should be ninety days really. And if you need more than ninety days for discovery okay, maybe an extra thirty. But August, that makes no sense to me.

MR. MAY: All right. That's fine, Your Honor. We can live with 120-day discovery schedules.

THE COURT: Fine. 120 days, move everything back. And I'm not counting the months, but that's February, March, April, May. I see no reason why you can't have a trial date before the July 4th holiday.

MR. MAY: Should we put any particular date in the order, or should we contact chambers, or leave it --

THE COURT: Maybe we'll make it July 3rd.

MR. MAY: Okay.

THE COURT: I'm teasing. I think that this is something which should be disposed of expeditiously. And I think that we should also establish a pattern. Adversary proceedings should move briskly. There's absolutely no reason to put in extra months of delay. I'm working hard, you should, too.

MR. MAY: We have no problem with 120-days timeframe, Your Honor. I can't speak for the defendants, but from the plaintiff's standpoint it's not an issue.

MR. LUCAS: Your Honor, we will discuss with the plaintiffs and we will submit a schedule that is responsive to your request here today.

THE COURT: Right. We're going to have a pattern in the adversary proceedings in this case of tight discovery, tight deadlines, and limited extensions only for good cause shown.

MR. KROLEWSKI: Your Honor, Martin Krolewski from Kelley Drye & Warren for JPMorgan Chase Bank NA.

We have no problem with that and fully support your opinion and position on this case as well.

THE COURT: Fine, thank you.

MR. LUCAS: Your Honor, there was one other adversary proceeding that was on the amended agenda. However, during the

meeting the parties met and they determined that they're actually very, very close to settlement.

THE COURT: That's great.

MR. LUCAS: They would like to move it off in hopes of finalizing the settlement.

THE COURT: This is the one that's being adjourned to 2/11?

MR. LUCAS: Correct.

THE COURT: Fine.

MR. LUCAS: I'm sorry, Your Honor. Just to be clear, this is Solar v. Lehman Brothers Special Finance Inc., case number 08-1638.

THE COURT: That's the one that involves three million dollars?

MR. LUCAS: Your Honor, I don't have the facts right here at my fingertips.

MS. WOLFE: Amy Wolfe on behalf of JPMorgan Case. That's correct.

THE COURT: It does involve three million dollars, okay. Thank you.

MR. KOBAK: Good afternoon, again, Your Honor. James Kobak, Hughes Hubbard & Reed for the SIPA trustee.

If we could go out of order and take the -- we've got a couple of uncontested matters basically that should be very brief. But if we could go out of order and hear the subpoena

motion, I think that would be our preference if it's all right with Your Honor.

THE COURT: I think that's consistent with what Mr. Miller did this morning. That's fine.

MR. KOBAK: Okay. Well, that's a good precedent, Your Honor.

Your Honor, I'll try to make this as brief as possible. I think there are a few misconceptions about our investigation and about what we're asking for. The statute says that the trustee shall conduct an investigation. And I don't think anyone any longer is contesting the right and necessity that we do that. The reason that we're here today is really solely to get authority to issue subpoenas in aid of that investigation. A lot of the other parties have referred to it as a 2004 examination, but in a real sense it really isn't that. It's really the section of SIPA that governs the scope of the investigation and what's involved and so forth.

I also want to make clear that the statute does talk about an investigation. And an investigation I think presupposes a certain degree of confidentiality and discretion and so forth by the party conducting the investigation. And that's very important to us in our experience in other SIPA liquidations, it's been very important.

We ask for subpoena authority. My personal belief is that we will actually exercise that, need to exercise it rather

sparingly. Because in our experience, we've often been able to talk to people informally, get their documents and so forth. But, frankly, in order to do that, it's often helpful to say if you don't cooperate we'll be issuing a subpoena tomorrow. And I think that will be the pattern in a lot of instances in this case.

I want to say at the outset, we think this is an independent investigation. We think it's independent in a sense of the examiner's investigation -- examination, just as our proceeding is independent, in a sense, of the Chapter 11.

THE COURT: Let me break in and ask you a question, though, because this is an important issue for the case as a whole.

Are you suggesting, and I realize you aren't quite done, but are you suggesting that the independent investigation to be undertaken by the SIPA trustee is one that in any way is inconsistent with cooperative efforts to avoid unnecessary duplication of effort with the examiner?

MR. KOBAK: I was just going to get to that, Your Honor.

First of all, we're strongly in favor of participating in the meet and confer that Your Honor has directed take place in the examination when the examiner is appointed. And we think that will be very valuable. We've said many times in our papers and many of the parties and

others-in-interest have asked us what our intentions are, and we've said all along that we intend to cooperate.

Frankly, there are issues that are of some relevance to us but might be of somewhat peripheral or background relevance to us that we expect the examiner will take the laboring oar on. And we're quite content to have the examiner or other parties do that. We may need to participate to some limited extent. We may need access to some of the information that's developed and so forth. But I see no need to duplicate efforts.

On the other hand, I think there are some issues that are of particular concern to us that really ought to be within our bail of wick at least as the main party conducting the investigation. And I can give you a couple of examples.

One of the purposes of our report is to report to SIPC and other regulatory authorities about matters that, frankly, are pertinent to future liquidations of this kind if there should be some. And Ms. Leventhal from the fed and Mr. Caputo from SIPC are both hear today, and I think are prepared to speak about that a little bit. But I can certainly see that there are some issues with respect to the sale to Barclays and so forth that could be of great concern where there are things that need to be investigated further, which have to do with is this a good way if a situation like this ever arises again, to do a transaction like this. Is this a good way to transfer

accounts to customers? Are there problems with the way the clearing agencies worked and so forth? So those are issues that are of great significance to us. I'm not sure, frankly, that they're really of a lot of concern, except in a very marginal kind of curiosity sense, to the creditors in the LBH/Triad case.

There are other issues that I think are of great concern to us that are also of some concern to creditors in the LBH/Triad case. An example of that would be the sale of the subsidiaries to LBHILE which several parties alluded to earlier today. They obviously have an interest in that. We, the trustee, has an interest in that. I don’t think that our interest is necessarily parallel to theirs. So what I would envision happening, assuming good faith on all sides, and I think there would be, is that when an issue like that needs to be investigated we would sit down with the examiner, whoever, and decide who's going to do that. It might be that in that case there would be a -- say Mr. X was going to be deposed with respect to those matters, perhaps there would be some matters in which the examiner or some other party would take the lead and there would be some other areas that would be ours to deal with.

And then if you get to a broader question, what were the causes of the failure of Lehman Brothers and so forth to the extent it involves the entire enterprise, I'm not sure that

we need to take the lead on that. It seems to me that's something the examiner or some other party can take the lead on. If there are little aspects of that are particularly relevant to what happened to brokerage assets that would be an issue for us. So that's basically the way we see this operating. And we're very happy to coordinate. I mean, we -- as Mr. Miller has said, I think with respect to his proceeding, there's much more than enough on everybody's plate. And if we can take some of the load off the examiner we're happy to do that. If they can take some of the load off of us we're happy to have them do that, and coordinate.

One thing that does concern us is the desire of Harbinger and certain of the other parties to participate in this process. And we really don't think there's any precedence for that in a SIPA liquidation. We really don’t think that's consistent with the nature of the proceeding that we're talking about, which is really an investigatory proceeding, not a public examination. And as I've said, there may be some depositions. But I think to the large extent, things will be done in a voluntary cooperative way.

Now, having said that, we're certainly happy to report to people and, indeed, we have duties to report on what our investigation uncovers, what kinds of causes of action there are and so forth. We do intend, to the extent there are notices of deposition, to file them, to file an affidavit of

service. So that will give interested parties and the targets the opportunity to come to Court if there's a need to come to Court for some special relief. And we're happy to talk to people. But beyond that, we don't think it's necessary or appropriate that anyone else have a right to participate. And we do intend, and we will do a very comprehensive report at the end of the day.

THE COURT: Is it your contemplation that the only disclosure that would be publicly available concerning your investigation would be the filing of these deposition notices within the docket of the case? Or would there be any other means by which interested parties, like Harbinger, for example, or the DCP parties, who also filed some papers on this? But they're just examples of parties-in-interest to -- are anxious to gain some visibility as to what you're up to. Is there any other way to keep parties advised so that they don't necessarily have to be in the room when a deposition is being taken, that they can get some sense as to how things are going?

MR. KOBAK: We will certainly be happy to talk to parties like that. I would anticipate that the Harbinger parties, for instance, the DCP parties, might call us up and ask us what we're doing to the extent that it was consistent with our not tipping our hands to some adversary or something, I think we'd be happy to tell them that. If they had questions they thought we should ask, things we should be aware of I'm

sure we would be grateful for that information and would try to use it in any examination that we conducted. And we certainly wouldn't get -- be adverse to getting back to them on particular issues. I don't want to lock myself into a schedule, it may well be that periodically we would report to the Court or put on our website things that indicate what we had been looking into and any tentative conclusions that we had reached and so forth.

I certainly think we'll try to be as transparent as possible, but it does have to be consistent with keeping this investigation an investigation and not letting targets necessarily and others know what it is exactly that we're doing.

I do think that there are a lot of parties -- we've already talked to parties who we probably will be part of the investigation who have very legitimate concerns about confidentiality. So having third parties involved in the process I think would just impeded the efficiency of an investigation and make them much less cooperative than they might otherwise be. So all of that I think has to be taken into account.

THE COURT: Do you have any sense as to the time horizon associated with the completion of the investigation and the preparation of the report?

MR. KOBAK: I don't have a definite time horizon.

The statute says as soon as practicable, I think. In fact, I think it says that repeatedly. So we feel that we are under a real mandate to get started quickly and to conclude as quickly as possible. But I really find it hard to give you an estimate because a lot depends on how cooperative people are and so forth. It's possible, and, again, I don't want to commit to this. I think we've done this in other cases that we might issue and interim report on certain issues even though there may be other issues that are still under investigation. I think it's quite likely that we might do that.

THE COURT: There's an aspect of this -- this just occurs to me as we're having this conversation, and I don't want to in any way by these comments impede the ability of Mr. Giddens to fulfill his mandate. But it occurs to me from your comments, that there are parts of what you are undertaking to do that are completely independent of what an examiner would do. And there are parts of what you're undertaking to do that are cooperative and harmonious with what an examiner would do.

MR. KOBAK: Yes.

THE COURT: For example, issues that relate to overall systemic risk probably are of less concern to the examiner or the examiner may want to deal with that, at least, generically, than they would be to SIPC and to the New York Fed which stepped in with some late filed papers in your support on this issue. So here's what I'm wondering, does it make any

sense for you to stage this investigation so that your resources are dedicated principally to things that the examiner would be doing on a front-loaded basis, so that you can do it cooperatively? And without in anyway slowing down or deferring the other aspects of the project, to view the aspects of that project as being separate and dependent, and perhaps, severable?

MR. KOBAK: I'm not sure they're completely severable, but probably to a large extent they are, yes. In fact, that frankly, is probably what we were intending to do. I mean, we want to reconcile accounts as they would have been on September 19th. We want to start investigating potential causes of action and so forth. Now, we have causes of action that are different than LBHI's or creditors, but certainly a lot of the same facts would be relevant to that. Certainly we would do that first. And as I say, we're very happy to cooperate with the examiner. We do not want to duplicate this -- duplicate efforts. I anticipate that if we're all subpoenaing or calling on the same witnesses and the same entities time after time, the likelihood that any of them will cooperate to a reasonable degree decreases. So I think it's in all our benefit to do this cooperatively and that is what we intend to do.

I do want to note that we have been in contact, as the U.S. Attorney said earlier, with her. And we have adopted

language. The language of our order is really quite similar to that entered in the Madoff case. In fact, it's to some extent modeled on what we've submitted.

And, basically, that ends my presentation unless Your Honor has further questions.

THE COURT: I have one question. I don’t know if this came up before Judge Lifland in the context of the Madoff order. But I did note that the Madoff order and the proposed form of order for Mr. Giddens has some fairly tight timeframes built into the order for compliance.

MR. KOBAK: Yes.

THE COURT: I noticed ten days and fifteen days.

MR. KOBAK: Yes.

THE COURT: But I didn't notice flexibility built into the order for modifying the response time. How is this going to work in practice?

MR. KOBAK: We'll be flexible. We've already talked to a couple of parties about notifying them in advance of the time that we would actually serve the subpoena and starting to talk to them about a reasonable timeframe. You know, if we serve an extensive document request on a major clearing bank, for instance, it's obviously going to take them more than ten days to get the documents together and there are going to be issues to work out. And we're perfectly prepared to do that. I think what are order actually says is the documents can be

made available on a rolling basis. Again, it doesn't have to be within ten days. We do anticipate that there may be some people that are uncooperative or where there is a very urgent need for information. I don't think those occasions will be frequent, but we did want to have a fairly tight timetable for those circumstances. But we're quite prepared to be flexible. And as I've said, I really think that more often than not we're going to be able to do things cooperatively to a large extent without having actually to resort to taking somebody's deposition. But I think having the ability and threat to do it is obviously crucial to us.

THE COURT: Okay, fine. Is there anyone else now who wishes to comment or be heard in connection --

MR. KOBAK: I think Mr. Caputo wishes to be heard.

THE COURT: I'd be delighted to hear from Mr. Caputo.

MR. CAPUTO: Thank you, Your Honor.

I think the starting point for examination of this issue, Your Honor, and there are really two -- we rise in support of the trustee's motion. There are really two categories of objections, it's coordination and participation, as I see it.

And I think the starting point is to recognize the difference for where the trustee gains his powers to investigate from that of any other investigator in this related proceedings of LBI or LBHI or the other cases. And that is --

as the Court has recognize, a SIPA proceeding is for all intents and purposes a bankruptcy court proceeding, Chapters 1, 3, 5, and subchapters 1 and 2 of Chapter 7 apply in a SIPA case. But the authorities granted to an examiner are in Chapter 11 and those that may be from the committee stem from a different section of the code than any applicable under SIPA. These are all Bankruptcy Code provisions. SIPA is enacted under Title 15, completely different basis. It's a remedial statute designed to affect a different purpose than a Chapter 11 proceeding. And designed to aid in the fair and orderly markets. And to provide enhanced fiscal responsibility rules.

So the basis for which the trustee is performing his investigation is really entirely different. And the result of the investigation, therefore, goes down a little bit different path. Neither the trustee nor SIPC have any problem with attempting to coordinate the trustee's investigation with any other investigatory activity whatsoever. Whether it is by the examiner to be appointed or actions undertaken by the committee or the U.S. Attorney's Office.

We have a long history of cooperation, especially in the Southern District of New York, Your Honor, of working with various agencies to investigate and to examine the acts and conduct that lead to the demise of securities broker dealers, and to prosecute any wrongdoing. Indeed, this cooperation is viewed by SIPC as an essential component of our program and

it's mandate to enhance those financial reporting rules and investor protection. But that cooperation has to be managed and balanced with other enumerated goals of the Securities Investor Protection Act.

For example, SIPA requires in no fewer than seven separate times in the statute, that the trustee carry out his duties and liquidate the debtor promptly. And it's that promptness that provides the focus for teeing up this investigation and getting going as quickly as possible. Under 78, triple F, sub (a), the purpose of a liquidation proceeding, for example, it begins with the introductory clause "as promptly as possible." Under triple F-2 the special provisions of a liquidation proceeding, the statute requires that the claims treatment must being promptly after the appointment of a trustee. And that any party, and that includes the parties here today who are objecting to the trustee's motion, any party that seeks to establish its claim against the estate may do so by formal proof or otherwise, Harbinger, DCP parties, etcetera. But -- and I quote from the statute "without limiting the powers and duties of the trustee to discharge obligations promptly as specified." These obligations include the trustee's investigation, which the statute mandates specifically must be conducted as Mr. Kobak stated, and I quote "as soon as practicable." Courts have supported this mandate, this goal.

For example, Government Securities Corp. case in the Southern District of Florida. Various parties sought a stay of the trustee's action in that case because there were other pending investigations. In that case Judge Crystal held "that the trustee has a significant interest in pursuing this action as quickly as possible. The failure of the debtor necessitated the appointment of a trustee to review and where appropriate satisfy thousands of claims. We must be able as quickly as possible to determine what assets are at his disposal and to satisfy those claims. He has a right to marshal assets. Any delay should be avoided." And more importantly, the Court concluded with "the public interest warrants prompt disposition of this case. The existence of SIPA and SIPC indicates a clear intention by Congress that broker liquidations should be accomplished as swiftly as possible. Members of the investing public who look for SIPC membership and a broker need the assurance that a business failure by a SIPC member will be remedied expeditiously in all its phases. And all its phases include the trustee's investigation."

In this case involving LBI, the Court should deny any requests by the parties, such as the committee, to delay the trustee's investigation. And in keeping with the Court's stated desire earlier in regard to the examiner motion that was pending, should encourage the trustee to proceed forthwith.

As the Court has also stated, Your Honor, there's a

cost factor here as well. You know, as the entity that must pay the administrative costs of the LBI case should it become necessary, SIPC is keenly aware of the cost and expense factor in this case. And we will be diligently attempting to limit, if not avoid, any duplicative practices or efforts and any unnecessary extension of projects or any other efforts that encompass matters that are not clearly designed to comply with SIPA and its clear mandate. So we believe the Court should deny the objections that seek to require the trustee to delay his investigation. And we will attempt to coordinate the trustee's efforts where ever possible and practicable with all of the other parties. Promptness is the most important factor, we think, dealing with the cooperation issue.

The cost factor I think also provides one basis for denying the request by Harbinger and the DCP parties. They should be able to participate without limitation in the trustee's investigatory efforts. More parties, more costs. Or as the Court -- paraphrasing the Court more cooks in the kitchen more expense brew.

There are other bases --

THE COURT: That's a mixed metaphor if I ever heard one.

MR. CAPUTO: Indeed. There are other bases to deny it. As I stated earlier there's a strong public interest in SIPC's work and SIPA's goals to enhance the financially

responsibility rules. That public interest must include maintaining the integrity of the trustee's investigation free from interference from third parties who's interest as creditors of the estate is necessarily limited to their claim and free from disclosure of information to parties where that disclosure would have a chilling effect on person willing to provide confidential information.

The trustee's mandate is to consider matters, many of which will become public in his reports to the Court. But may of which may not. For example, the trustee may make references to prosecutors under Title 18 of the U.S. Code. That is something that has happened in numerous SIPA cases in the Southern District of New York. Or he may have discovery from confidential sources to assist in developing various causes of action. This likely component of the trustee's investigation which has been long recognized as essential in cases of McCray v. Illinois, Supreme Court. Novak v. Kovack, Second Circuit. Vital to societies arsenal of defense, we believe that this component should not be compromised by permitting unlimited access to the process to third parties with only limited interest. Courts have recognized the strong public interest in maintaining the integrity of the process of that affective regulatory activity, which in this case entails the trustee's investigation. In once case Ross v. Bolton in the Southern District of New York it recognized that courts have wide

discretion in supervising discovery efforts, especially in the context of securities industry cases involving quasi governmental entities, or in that case, non-governmental entities, such as the NESD. Paraphrasing and borrowing from that court's decision we submit, Your Honor, the strong public interest would clearly be undermined by permitting any of the thousands of potential creditors in LBI to be intertwined with the trustee's investigatory process and his statutorily governed work.

Specifically in that case, Your Honor, the district court held and I quote "the public interest in maintaining certain functions and relationships has been a primary factor in limiting discovery." That concept has been applied in the context of a SIPA case by the bankruptcy court in the Southern District of New York in Adler Coleman Clearing Corp. In that case a party sought to compel the NESD to reveal information through discovery proceedings, but the court denied the motion. And the court held "that the investigatory privilege that's created by the trustee's powers is a qualified common law privilege protecting civil as well as criminal law enforcement activity. The privilege has been extended to quasi governmental and non-governmental entities. Premature disclosure of factual information to the target of a pending investigation could impair that investigation and thereby defeat the important public interest in maintaining the

integrity of effective industry self-regulation." The Court here should similarly limit access by creditors and other parties to the investigation.

Finally, Your Honor, SIPA specifically contemplates that the process of a trustee's investigation would not be open to creditor or public participation. But that the product -- the process would not, the product would be part of the public domain through the trustee's report to this Court. The statute provides that the trustee shall, as soon as practicable, investigate the debtor. It does not provide that the trustee and creditors shall or that the trustee and other interested parties shall.

And investigation, as Mr. Kobak stated, by its very nature, has a confidential nature to it. And it's efficacy I believe would be compromised if it were to be open to third party participation without limitation.

Thank you, Your Honor.

THE COURT: I understand your argument and it was effective and impassioned where appropriate. But I have a question for you.

MR. CAPUTO: Sure.

THE COURT: The statue clearly talks about the trustee being the party who is empowered to conduct the investigation. But it doesn't state that it has to occur in the dark. So my question is this, is there any precedent of

which you are aware that stands for the proposition which you have asserted that the discovery that's being conducted in aid of the investigation needs to occur without creditor knowledge?

MR. CAPUTO: No. And no one has challenged this particular aspect of the statute. So there's -- you know, it's a scare case law and that's why I allude to cases that are similar but not on point. There are no cases on point. And this case, of course, provides such a unique perspective, it's different than anything that has ever gone on before. So in that regard, we don't intend to keep all parties in the dark forever about some process and then have some star chamber report that comes out of it to the Court and it's all of a sudden finally provided to the public five years hence.

THE COURT: I think that's what's going on here, though, I think that part of the motivation, and I can't speak to anybody's motivations, I'm only making an inference, in the Harbinger position paper and the papers filed by the DPC parties. Is there anybody from Hennigan Bennett on the phone, by the way?

MR. MORSE: Yes, Your Honor. Joshua Morse from Hennigan Bennett on behalf of --

THE COURT: You better turn up the volume on your phone, it's pretty hard to hear you. But I believe that those papers are to some extent motivated by not so much the desire to get in the way as to get information. And perhaps not to

have to wait till the end of the process to find the fruits of the investigation. Is there any precedent for interim sharing of information?

MR. CAPUTO: Not in the context of a trustee's investigation. No precedent in case law. But that being said, we concur with the representation made by Mr. Kobak, that we will be open to communication with many parties, including Harbinger and the DCP parties and others with whom we have already been in contact with many times, to elicit their concerns, their questions. But have them participate at various levels. What we are most concerned about -- and SIPA contemplates this in another context, which is that all of the documents that are elicited and created during the course of a liquidation proceeding are -- SIPA provides for this in section KKK, it says that the reports are public essentially. All this information is open to the public except where SIPC and the commission have deemed that it's not in the public interest. Well, the trustee's investigation is going to contain necessarily some sensitive information. And information that has already been asked for by the house finance committee. For example, testifying last week, SIPC was already called before the committee to testify on matters related to Lehman and Madoff. There is a host of information that we provide to the commission on a confidential basis. So there may be a fair amount of sensitive information that really won't ever see the

light -- the public light until it's massaged and edited sufficiently to make it into a public report that is recommended.

But that being said, there's a tremendous amount of information and a tremendous amount of duplicity I think to be covered by those items that the examiner covers, that the U.S. Attorney covers, etcetera, that we intend to coordinate with, share information. Again, as a cost factor, it's certainly not duplicate anything. And hopefully get the cooperation coming back to us from those parties to give us questions to ask for having Barclays, for example, which may be the key holder to much of the information on their system. To get them to open up that -- to use that key and open up the system so that we can gain access to it readily. Thanks.

THE COURT: Okay. Before hearing from any objectors, to the extent that the New York Fed wishes to be heard, this is the time for that. Are you going to rest on your papers?

UNIDENTIFIED ATTORNEY: Yes, Your Honor. Given the hour and the amount of statements that have been made, we concur with much of what Mr. Caputo says to the importance of the trustee's investigation.

THE COURT: Fine. I'll hear from the objectors.

MS. RUTKOWSKY: Good afternoon, Your Honor. Rheba Rutkowski, Bingham McCutchen on behalf of the Harbinger funds.

We really aren't an objector, we joined the trustee's

motion because we support that investigation and the scope as defined in the trustee's motion. We believe those areas need to be investigated, they're the areas we're interested in, wholly apart from LBI's role with respect to customer accounts. There's the issue of LBI as the pay master conduit as LBI has been described in the cash management system that was in place pre-petition. So LBI has a central role. We're all for promptness, we're all for getting on the stick right now and jumping on this investigation. So we fully support the trustee's motion.

THE COURT: There's a but coming.

MS. RUTKOWSKY: The only reason -- I'll put it this way, Your Honor. I feel that your inferences about what we were trying to say in our motion, I won't speak for DCP, but certainly for Harbinger, that's absolutely right. We're seeking information. I've heard everything that transpired in Court today. I've heard what Mr. Kobak had to say about willingness to work, perhaps to provide interim reports. I heard Your Honor's suggestions about whether that kind of thing might be possible. Mr. Sabin earlier suggested that perhaps in the course of the examiner's work there could be monthly reports or some such thing as certain areas are resolved. Reports can come out so that information is provided to creditors. And that's basically all we're seeking here. We're not interested in getting a status report in the sense of

here's what we're working on this week.

THE COURT: You're not interested in showing up in the deposition room and asking five questions?

MS. RUTKOWSKY: Well, if the Court wants to allow us to do that, fine. But certainly --

THE COURT: No, I don't want you to do that.

MS. RUTKOWSKY: I didn't think you did, Your Honor. And certainly that was not our intention to gum up the works or impede the course of the investigation. We're just trying to find a way to get access to information of some kind as it becomes available to parties-in-interest and creditors. And I think the Court's suggestion about interim reports -- and I think it was Mr. Kobak who might have suggested toward the end of his presentation that as certain issues are resolved those facts may come to light and become public or disseminated to creditors and parties-in-interest somehow. And so with that, I will just leave it. We hope that something will be in place that will allow for that kind of interim reporting. And that's all we're looking for here, Your Honor.

THE COURT: Okay. I hear you. Is there anything from the DCP parties?

MR. MORSE: Yes, Your Honor. Joshua Morse for the DCP parties again. Today we've heard a lot of discussion about transparency as well as the reduction of duplication of efforts. That's really the key to our objection. We're not

attempting to materially burden the trustee or increase the costs of the investigation whatsoever. We simply believe that increased transparency to parties such as us who have an interest in the case should be increased. Although we did ask not only for access to documents that were produced to the trustee, and an opportunity to participate in examinations of witnesses. Our primary focus is essentially the access to the documents so as to avoid duplicative discovery down the road.

We assume that Hughes Hubbard is sophisticated enough of a law firm that it does plan to maintain all the documents attained through the discovery process electronically. As we've been privy to in other cases in this district, technology exists to efficiently and cost effectively provide access to third parties to virtual data rooms that contain information that has been received during discovery and things that such a mechanism can be implement in this case.

The trustee has not provided a good enough reason why that cannot occur. Having a single repository of relevant information will actually, we think, reduce costs to the future discovery request that may be target of the trustee and minimizes, again, duplicative and time consuming efforts on our part.

To the extent that any of those matters or information are confidential I assume that we will be able to work out various restrictions to the access of that

confidential information.

Other than that, Your Honor, we simply request that the motion, if granted, be conditioned upon reasonable allowance for access by the parties or any other third parties who do have an interest.

THE COURT: I hear what you're saying and I don't want to reopen the argument along the lines that you have just taken it candidly. Because I think that nothing in the motion deals with such things as electronic data access. Nothing in the motion deals with a repository for the benefit of creditors of the LBI estate. And nothing in the motion is geared to facilitate any discovery that the DCP parties, or any other party for that matter, might wish to take more efficiently as a result of the investigation which is being conducted by the SIPA trustee. So while I have heard what you've said, and while it doesn't sound unreasonable as you say it, I think it's completely unreasonable in the context of the motion that's pending.

To the extent that you are seeking conditions with respect to the trustee's request for the right to have subpoena powers to conduct its own investigation, I think your position goes far beyond reasonable. This is going to be a clean unconditional order. The trustee will get the very same power that was granted to the SIPA trustee in the Madoff case. He's entitled to it. He has a statutory mandate to fulfill and he's

entitled to do that. My comments that were made during the course of the argument were not entitled to convert this into an opportunity for any individual creditor to dip into the work product of the SIPA trustee and gain what amounts to access to the work papers of the investigation. You've gone well beyond what I consider reasonable and appropriate in the argument you just made and I reject it.

The motion's granted.

MR. MILLER: There are a couple of uncontested matters I believe.

UNIDENTIFIED ATTORNEY: Your Honor, may I be excused?

THE COURT: Yes. If anybody -- it's now 5:00, if anybody wants to be excused before hearing the uncontested agenda on the SIPC proceedings this is the time when you may feel free to leave. I also have a matter listed at 5:00.

MR. WILTENBURG: Your Honor, we can do this quite quickly.

THE COURT: I'm not trying to rush you along, I'm just mentioning there's going to be some likely traffic, both going in and out of the room while you're talking.

MR. WILTENBURG: Your Honor, once again, David Wiltenburg, Hughes Hubbard & Reed on behalf of the SIPA trustee.

There is, in fact, only one uncontested matter that we need to talk about briefly as the others were talked about

in the context of the LBHI docket. And that is item 22, which is the trustee's motion for an order pursuant to Section 365(d)(4) of the Bankruptcy Code extending the time to assume or reject unexpired leases of non-residential real property.

Your Honor, no formal objections were received to that motion, but we did receive an inquiry from one of the affected landlords. And that involves premises located at 555 California Street in San Francisco. And for the purposes of allowing that discussion to proceed and potentially reach a resolution of it, we have submitted a proposed order that carves out that particular lease. That is the lease for the premises at 555 California Street in San Francisco. And Your Honor will see in the blackline version of the revised order that that -- the matter with respect to that property is referred to the omnibus on January 28th. And in the interim the trustee's time to assume or reject is extended. And we'll be in a position to hand that order up at the end of the hearing today.

THE COURT: I think this is the end of the hearing.

MR. WILTENBURG: In all other respects, the order is unopposed and we would ask that it be granted.

THE COURT: It's granted. Is there anything more?

MR. MILLER: That's it for the holdings case, Your Honor.

THE COURT: And that's it for the SIPC case.

MR. KOBAK: Yes, Your Honor, that's it.

THE COURT: Then we are at the end of the hearing. Although, I have something at 5:00 I don't know if there are people in the room for that hearing or not, I'm going to take a fifteen-minute recess. We're adjourned.

(Whereupon these proceedings were concluded at 5:04 p.m.)

I N D E X

R U L I N G S

I N D E X, cont'd

R U L I N G S

I N D E X, cont'd

R U L I N G S

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C E R T I F I C A T I O N

I, Lisa Bar-Leib, certify that the foregoing transcript is a true and accurate record of the proceedings.

Lisa Bar-Leib

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